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Thomas McMurray - 1858.

TO THE

W.P.R. Street at Toronto 1862.

H.A. Robson 1931.

MORAL, SOCIAL, AND PROFESSIONAL DUTIES

OF

ATTORNEYS AND SOLICITORS.

BY

SAMUEL WARREN, Esq., F.R.S.,

OF THE INNER TEMPLE, BARRISTER-AT-LAW.

"I do swear that I will truly and honestly demean myself in the practice of an Attorney and Solicitor, according to the best of my knowledge and ability. So help me God."—OATH OF ATTORNEYS AND SOLICITORS.

NEW YORK:

HARPER & BROTHERS, PUBLISHERS,

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FRANKLIN SQUARE.

1855.

TO THE

PRESIDENT, VICE-PRESIDENT, AND COUNCIL

OF THE

INCORPORATED LAW SOCIETY OF THE UNITED KINGDOM,

This Work is Inscribed,

BY THE AUTHOR.

RESOLUTIONS

OF

THE COUNCIL OF THE INCORPORATED LAW SOCIETY OF THE UNITED KINGDOM.

At a Meeting of the Council, held on Thursday, the 15th of June, 1848, it was

RESOLVED—

That the cordial thanks of the Council, on behalf of the INCORPORATED LAW SOCIETY, be presented to Samuel Warren, Esq., Barrister-at-law, for his highly valuable and interesting course of Lectures, on the Moral, Social, and Professional duties of Attorneys and Solicitors, delivered in the Hall of the Society, in the present Trinity Term.

And being of opinion, that the Lectures are well calculated to maintain the station and character of the profession, and especially to stimulate and benefit its younger members, by aiding and directing their study of the Law, and promoting honorable practice—

The Council trust that Mr. Warren will extend the benefit of the Lectures, by an early publication of them.

That the President be requested to communicate these Resolutions to Mr. Warren.

(Signed) B. AUSTEN,

President.

PREFACE.

THE four "Lectures" mentioned in the foregoing "Resolutions," which the author feels great gratification in prefixing to this work, form the basis of it. Several times during the delivery of them, he expressed regret that his self-imposed limits had compelled him, not only to touch very slightly topics entitled to detailed consideration, but altogether to pass over many others. Even before receiving the "Resolutions" in question, he had contemplated publishing the Lectures, carefully revised, and incorporating into them all the materials which he had collected. He has carried his intentions into effect, in this work;

which, though not bulky, and published in an unpretending, but, it is hoped, convenient form, contains results of more than seventeen years' watchful observation. Many of the topics discussed in the ensuing pages required both firmness and delicacy in dealing with them, and have not hitherto, as far as the author knows, been noticed in print.

However this work may be received by the great and powerful body, numbering between thirteen and fourteen thousand, to whom it is professedly addressed, it is offered in a spirit of candor and independence, but at the same time with peculiar solicitude, and under an almost painful sense of responsibility. The author's anxieties, however, abate a little, when he reverts to the hearty reception of the

"Lectures," by the large audiences before whom they were delivered, and reflects on the sanction afforded to those Lectures; by the Council of the Law Society—gentlemen of great practical experience, and professional eminence, who, after hearing the Lectures, felt themselves justified in requesting the speedy publication of them, as calculated to be practically useful to the profession. He has done his utmost to render the ensuing pages worth reading. It has cost him, indeed, very severe exertion, and at a period of the year usually devoted to recreation, to comply with the many applications which have been made, for the publication of the Lectures during the Vacation.

He ventures to express a hope that the work will prove not altogether uninterest-

ing to even non-professional readers. One leading object of the author has been to show both attorneys and solicitors, and their clients, what are their *reciprocal* rights and duties: that both parties are bound to be honorable, liberal, reasonable, and conscientious in their professional intercourse and dealings with each other; and, in a word, that the true interests of the profession and the public are identical.

INNER TEMPLE,
25th September, 1848.

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MORAL, SOCIAL, AND PROFESSIONAL DUTIES

OF

ATTORNEYS AND SOLICITORS.

LECTURE I.

GENTLEMEN:

I SHALL not waste a moment of the precious hour* allotted to me, by expatiating on the mingled anxiety and satisfaction with which, on the invitation of the Council of this important institution, I appear here, as a disinterested well-wisher to the profession, to speak on a subject of great interest, but exceedingly difficult to be dealt with effectively. Thus, surely, I may characterize the moral, social, and professional duties of so great and influential a class of persons, as the attorneys and solicitors of the United Kingdom; whose due discharge of their duties is a matter of vital concernment to the community. Having, however, entered on this serious undertaking, I shall do my best to justify the confidence which has been reposed in me, by laying before you, in a kindly and candid spirit, convictions which are the result of no inconsiderable opportuni-

* Lectures at the Law Institution are limited to an hour; a period, however, which the author exceeded very considerably, but with an indulgence on the part of the audience, of which he retains a grateful remembrance.

ties for professional observation and reflection. I feel actuated, in doing so, by an earnest desire to discharge some little portion of that debt which, as our own illustrious Lord Bacon has told us, every man owes to his profession.* Well indeed would it be, gentlemen, if all of us, in whatever department of it we are placed, constantly bore in mind this "debt." It would at least tend to counteract that spirit of selfishness, which the peculiarly absorbing nature of our pursuits is but too apt to engender; reminding us, that the enriching and aggrandizing ourselves and families, is not, or ought not to be, our only object in entering and occupying the liberal and honorable profession of the Law, the true interests of which are identical with those of the entire community. He, therefore, who, by his exertions, and by his example, contributes to advance the one, is at the same time serving the other; and whoever honestly *tries* to do so, however feebly, however ineffectually, will have the approval of good men, and conscience will ratify that approval.

Gentlemen, I said just now, that the due discharge of your varied, arduous, and responsible duties—your intellectual and moral fitness for your profession, is a matter of vital concernment to society at large—to every individual in the community, from peer to peasant; nay, from the august occupant of the throne, down to the very humblest subject in her dominions. Is it not so? Why, even Her Majesty has her private solicitor; and the most destitute pauper may, thanks to the noble provisions of our laws, at any time *command*

* Law Tracts, 28.

your services, and ours, to enforce his rights, and redress his wrongs :* services, I feel pride and pleasure in saying it, as cheerfully and energetically rendered, without fee or reward, as though they had been bestowed upon the highest noble in the land, and for the most splendid remuneration which can stimulate exertion.

You, gentlemen, are armed with powers really

* In the year 1494 was passed stat, 11 Hen. VII., cap. 12 (entitled "A mean to help and speed poor persons in their suits"), conferring the right alluded to in the text. The preamble of the act runs thus: "Where [i. e. Whereas] the king our sovereign lord, of his most gracious disposition, willeth and intendeth indifferent justice to be had and ministered, according to his common laws, to all his true subjects, as well to the poor as rich; which poor subjects be not of ability, ne [nor] power to sue, according to the laws of this land, for the redress of injuries and wrongs to them daily done, as well concerning their persons and their inheritance, as other causes." "For remedy whereof, in the behalf of the poor persons of this land, not able to sue for their remedy after the course of the common law—be it ordained and enacted, &c., That such poor persons shall have writs, &c., &c., therefore nothing paying," and "the justices shall assign to the same poor person or persons, counsel learned, by their discretions, which shall give their counsel, nothing taking for the same; and the justices shall likewise appoint attorney and attorneys for the same poor person or persons, and all other officers requisite and necessary to be had for the speed of the said suits to be had and made, which shall do their duties without any reward for their counsels, help, and business in the same," &c., &c. It would appear, however, that this statute was really but confirmatory of the beneficent common law, which had long before conferred the same privilege on the poor. See per Tindal, C. J., and Maule, J., in the recent case of Brunt *v.* Wardle, 3 Manning and Granger p. 534.

formidable, for good, and for evil. You may serve and protect, you may harass and oppress all of us, in our turn; for which of us is there, how conscientious and circumspect soever, that may not, at some time or other, have to ask your services in the conduct of our affairs, and to assist us through unexpected litigation? Lord Chancellors and judges, even, can not discharge their exalted functions, without occasionally finding the law which they administer, turned, whether rightfully or wrongfully, against themselves!* Bishops may have to run the gauntlet of a law-suit, before assuming their miters!† And—to pass for a moment from grave to gay—sweet Jenny Lind, warbling, lark-like, high in the regions of song, is suddenly stricken by a certain missile of ours, to wit, a writ, and drops terri-

* During the last few years, actions and legal proceedings have been prosecuted against Lord Chancellors and judges, but in every instance so unsuccessfully as to show the frivolous and vexatious spirit in which they had been undertaken.

† This alludes, first, to the legal proceedings instituted a few months previous to the delivery of these lectures, against Dr. Renn Hampden, in Hilary Term, 1848 (upon his elevation to the see of Hereford), on the alleged ground of heterodoxy; and which occasioned the Court of Queen's Bench to be equally divided in opinion; and secondly, to the criminal information filed by Dr. James Prince Lee, on his being appointed to the newly-created see of Manchester, against a person named Muggeridge, who had challenged his conduct on the alleged ground of inebriety on a particular occasion of performing clerical duties; but the rule for a criminal information was made absolute in Michaelmas Term, 1847, Dr. Lee most solemnly denying the charge, and the defendant filing no affidavits to support it; and he was found guilty on the trial of the information, before the Chief Justice of the Common Pleas, at the ensuing Spring Assizes for Warwick.

fied through the air thrilling with her melody, into the arms of—*her attorney!** In the gravest exigencies of the state—equally in matters of business, and of amusement—on great and on small occasions, you find yourselves called into action, expected, and promising, *and that upon your oaths*, to acquit yourselves discreetly, and with integrity. Gentlemen, I repeat, speaking as one of the public, that we could not do without you, even if we wished. Whatever be our talents or acquirements; whatever our tempers and dispositions—whether amiable and yielding, or exacting, irritable, and overbearing; whether we be virtuous or profligate, we may have to take you into our confidence, and open to you the most secret recesses of our hearts. We tell you what we would disclose to no one else on earth. We pour into your ears the accents of anguish all but unutterable. To your eyes are exposed hearts bleeding and quivering in every fiber; pierced by the serpent's tooth of ingratitude, broken by the loss

* Jenny Lind, a famous Swedish singer, having acquired almost unprecedented continental celebrity, was engaged to sing at Drury Lane Theater, by Mr. Bunn, the lessee and manager, in the year 1846. She broke, however, her contract with that gentleman, and entered into another with the lessee of the Queen's Theater, Mr. Lumley. On this Mr. Bunn brought an action, and recovered a verdict of £2500 damages against her, at the London sittings after Hilary Term, 1848, before Lord Chief Justice Denman and a special jury. The Court of Queen's Bench was afterward moved to grant a new trial, on the ground that the damages were excessive; but they refused to do so, saying that the jury were obliged to speculate in such a case; and that the court saw no reason to quarrel with the result at which they had arrived.

of those whom we loved more than life itself—whether taken from our arms by death, or ravished from us by fiendish lust, or the ruthless ruffian hand of violence. When our domestic peace is slain; when the most hallowed relations of life and society are dislocated by the evil passions of others—by cupidity, perfidy, fraud, hypocrisy, malice, and revenge; in short, whether our honor, our life, our liberty, our property, or those of our families, are endangered or outraged, to you perforce we must fly in our extremity: living or dying—yes, I say dying, for we descend into the grave, in reliance on the discretion and integrity with which you have undertaken to carry into effect our wishes on behalf of those loved ones whom we are leaving behind us; whom we would fain shelter, as far as we may, from calamity and the world's reverses, by providing for them out of the produce of a life's labor, anxiety, and privation; and we look to do all this, through the instrumentality of your judicious and conscientious exertions.

When the shaft of calumny has wounded us, it is to you that we fly to vindicate our smarting honor. Into your ear are poured the affrighted accents of those to whom guilt is imputed; crime, of fearful enormity, attaching infamy maddening to contemplate; crime, too, which may be *falsely* imputed to him whom the mere imputation is blighting before your very eyes, and who, in his agony and horror, has sent for *you*—has summoned *you*, that he may listen, in the dread gloom of a prison cell, to your sympathizing words of counsel and guidance; that he may whisper into your ear the

indignant protestations of an innocence which, with confiding eagerness, relies on you for its vindication. In all such agitating cases, I have been supposing you our friends; but remember that we also have you for our *opponents*, using, then, your greatest energies as resolutely against us, as you would have used them for us, had you been called upon to do so. Oh, how much our peace and safety depend, in this latter case, on your being—*gentlemen!*

Are these sketches—these outlines—of the scenes for which you have to prepare, too vivid in their tints? Is the tone overcharged? Is there any exaggeration, tending to inflate you with a false sense of importance, or depress you by a disheartening fear that you are not, and can not become, sufficient for these things? Here are sitting before me many of the heads of your department of the profession, gentlemen of powerful talents and extensive experience: there are also present some of the most distinguished of my brethren; and I ask them—the heads of your branch, the heads of my branch of the profession—am I overstating the case? I think they would tell me that I am not, and could, on the contrary, illustrate and enforce what I have been attempting to describe, by a thousand striking instances which have come, and are continually coming, under their notice. Well, then, if this be so, gentlemen, on what a profession you have entered, challenging the constant exercise of all your energies!

Let us, then, come at once to close quarters, for our natural interests impel us to do so; and I tell you, that in becoming attorneys and solicitors, you

are about to enter, or have actually entered into a solemn CONTRACT with us, with society at large, that we may employ you not only advantageously but safely, without compromising our best and dearest interests, which, as I have said, we are compelled to intrust to you. And there is one very material circumstance to be here adverted to, which will have infinite weight with an honorable mind; namely, that we are, to a great extent, compelled to take you, as it were, on trust. On innumerable occasions of great moment to us, we must take your word for your fitness; having, in the emergencies bringing us together, no time or opportunity for previous inquiry into your competency. We must have you then and there. On your door glitter the *indicia* of your calling. There you have deliberately written the terms of your contract, "Attorney and Solicitor:" as such, you are hastily sent for, and *must act*. It is somewhat different, observe you, with us at the bar. In nine cases out of ten, you have sufficient opportunity for ascertaining beforehand the qualification of counsel to discharge the duties with which you intrust them: *our* clients have, therefore, here manifestly a great advantage over *their* clients; and does not that consideration sharpen your sense of the responsibility which you are undertaking? The law of the land puts its own construction on this your contract, and a very serious one, as I shall show you hereafter. It declares that you have pledged yourself to exercise reasonable skill and diligence: to exhibit perfect integrity; and a breach of this contract may occasion you most bitter mortification, exposure, censure by

the judges in open court, before keen rivals, and the necessity of making ruinous reparation to your client; while the fact of your having had to do so, scares away your other clients, and those who would otherwise have become such. This, however, may happen, and yet the nature of the case may be such that your unfortunate client shall receive no effectual redress: perhaps none at all. He may be beyond the reach of all earthly redress: he may be moldering in his grave, into which he descended, not knowing, poor soul, that he was leaning on a broken reed, in relying on his professional adviser's competence to arrange his affairs; that his affectionate and just purposes were destined to be all defeated! The "dull cold ear of death" can not hear of a will that is mere *waste paper;* of property being frittered away in fruitless efforts to repair your cruel and fatal blundering; of a widow and orphans reduced to destitution, while property, righteously destined for them, is being, through your instrumentality, enjoyed by a comparative stranger, or even by the bitterest enemy of your dead victim! Language, gentlemen, is not strong enough adequately to stigmatize the misconduct of him who rashly rushes into a position where he may do such terrible and irreparable mischief, like "a madman scattering firebrands, arrows, and death." I assure you that he is guilty of immorality in doing so, and telling a flagrant falsehood to society!

Start, gentlemen, I beseech you, with a deep conviction, which should also be impressed upon those who send you into the profession, that if you would not occupy it discreditably and mischievously, you

should not enter it hastily, and without adequate consideration of its real nature, and of your fitness for it. I invite you to make such an examination at this early stage of your career, that it may enable you to remedy any past inconsiderateness, or stimulate you into a more zealous and efficient prosecution of a highly honorable and distinguished walk in life: for that it really is such, I will pledge myself to demonstrate to any unthinking person, who may not yet have made the discovery. But in the mean time, let me ask you, the youngest present, have you ever really given these matters a moment's thought? I mean effectual thought. Do any of you inwardly flinch from the question? When thus challenged, are you owning to yourselves that you have neglected this duty, and hitherto acted with a kind of thoughtless indifference and levity, of which the consequences may be just beginning to be perceptible to yourselves, in a sickening suspicion of incapacity, whether from want of moral or intellectual qualification, or both? Such feelings may be painful, but most salutary, because they may give you the first impulse to rouse yourselves, and be up and doing. You see others around you succeeding, and likely to succeed, while your own prospects may be gloomy and disheartening. Do you childishly attribute the difference to *ill luck?* Or, can you trace effects to their true causes: your own actual or impending failure, to your own negligence and thoughtlessness? Others looking on, and knowing you, may be able to see what *you* do not; and are in no way surprised at what they see. If you could but see yourselves, "as others see you," if for

only a moment, that startling glance might be your salvation!

Let us look, then, as at a map of a country through which you intend to travel, at the profession which you have entered, and in which the remainder of your life is to be spent; and remember —ponder the words, though their form and aspect be trite and simple—that *you have* BUT ONE *life.* The tone of your professional character, intellectually and morally, will depend on the estimate which you form of the nature of the duties which you have undertaken, and of the spirit which ought to actuate you. You may creep into, and all through your profession, like a mere beetle. You may plod your way into, and wearily all through it, as a poor beast of burden: you may sink into a mere hewer of wood, and drawer of water; you may be content to be, in the contemptuous language of Dean Swift,* "mere underworkmen, expert enough at making a single wheel in a clock, but utterly ignorant how to adjust the several parts or regulate the movements." The law may, from first to last, appear to you a huge shapeless mass of unintelligible and merely *arbitrary* rules, instead of a noble and symmetrical system, based on reason, morality, and religion, and elaborated by the choicest intellects which have ever dignified the earth by their presence. It is in your power to become a worthy, enlightened member of a great and powerful profession, starting with such a distinct and elevated conception of the scope and objects of the entire system as will throw light upon, and surround with interest, the minutest details into

* Sentiments of a Church of Englandman.

which it is ramified. By seeing that it affords constant opportunity for exhibiting the best qualities of our nature, both for action and suffering—true magnanimity—you will be likely to feel pride and pleasure in what you have undertaken. Beware, then, how you treat these matters lightly; how you enter your profession with inadequate or unworthy notions of its importance and dignity. In so doing, believe me, you are wronging yourself, impairing your sense of self-respect, and lowering the tone of feeling which should ever impel you to action. You will be likely to adjust your conduct to a low standard—recognizing and yielding to the impulse of petty and paltry motives—instead of invigorating your soul by constantly contemplating the lofty and everlasting principles of virtue and justice which are concerned in the structure and working of law, and which, if steadfastly kept in view on even the most apparently trivial and discouraging occasions, will purify the atmosphere in which you breathe, invest your character with dignity, and enable you *to magnify your office and make it honorable.*

What, then, let us ask, in a practical spirit, is signified by that law which you aspire to assist in administering? *Law* is a monosyllable pregnant with a significance which ought to be distinctly present to your mind, from the first moment at which you are able, and called upon, practically to comprehend it. The law is that power by which civil society is constituted, and sustained in existence; overpowering the unruly elements of our fallen nature; with heaven-born energy converting the savage into the citizen; making the wilderness to bloom

and blossom as the rose, redolent of the balmy air of peace and order; and surrounding its confines with impregnable bulwarks against brute force and arbitrary will. I beg leave to read to you, gentlemen, in lieu of any thing that I could offer, a short passage from one of Sir James Mackintosh's admirable disquisitions on moral and political philosophy—one which, if listened to attentively, may appear to you singularly beautiful, and worthy of being engraved in the memory of every one engaged in the study and practice of jurisprudence.

"There is not, in my opinion," he says, "in the whole compass of human affairs, so noble a spectacle as that which is displayed in the progress of jurisprudence; where we may contemplate the cautious and unwearied exertions of wise men through a long course of ages, withdrawing every case, as it arises, from the dangerous power of discretion, and subjecting it to inflexible rules; extending the dominion of justice and reason, and gradually contracting, within the narrowest possible limits, the domain of brutal force and arbitrary will."*

How simple, impressive, and just, is this observation! It presents you, in a word or two, with the very essence of jurisprudence, both theoretically and practically considered; and is calculated to throw a flood of light into all the dark sinuosities and intricacies of the most artificial system of particular jurisprudence, professing to be regulated by wise and just principles.

The love of society, gentlemen, is an original instinct or tendency of our nature; and the highest

* Discourse on the Law of Nature and of Nations.

stage of civil society is that which protects the weak from the strong, by so contriving its arrangements, that no individual shall be called on to surrender, or abstain from exercising, more of his absolute natural rights, than is inconsistent with the welfare of the whole community. Here the philosophic eye at once detects the existence of two forces which ever have been, and ever must be, antagonists, in any conceivable scheme of society, or form of free government; I mean LIBERTY and AUTHORITY—ever sternly confronting one another. A free and good government is that in which the two are brought most nearly into harmonious action; where there is as much liberty, and as little restraint imposed on it by authority, as is compatible with the peace and safety of the whole, and of each individual. When this practical balance is obtained, it is designated by the phrase *civil liberty:* words often grievously misunderstood, and grossly misrepresented. The true nature of this same civil liberty is thus explained by the profound Bishop Butler, in a sermon preached before the House of Lords:—

"Civil liberty, the liberty of a community, is a severe and a restrained thing; implies, in the notion of it, authority; settled subordinations; subjection; and obedience; and is altogether as much hurt by *too little* of this kind, as by *too much* of it. And the love of liberty, when it is indeed the love of liberty, which carries us to withstand tyranny, will as much carry us to reverence *authority*, and support it; for this most obvious reason, that one is as necessary to the very being of liberty, as the other is destructive of it. And therefore, the love of lib-

erty, which does not produce this effect; the love of liberty, which is not a real principle of dutiful behavior toward authority, is as hypocritical as the religion which is not productive of a good life.

"Licentiousness is, in truth, such an excess of liberty, as is of the same nature with tyranny. For what is the difference between them, but that one is lawless power exercised under pretense of authority, or by persons invested with it; the other lawless power exercised under pretense of liberty, or without any pretense at all? A people, then, must always be less free, in proportion as they are more licentious; licentiousness being not only different from liberty, but directly contrary to it; a direct breach upon it."*

Gentlemen, in these few sentences this great thinker has compressed a volume of sound political philosophy, never more fit to be reflected on, than at the present eventful period. These few words go, indeed, to the very root of the whole matter, and comprise the chief articles of a free Englishman's creed. They embody his notion of true liberty—of free government. His sober and manly character abhors the wild, fantastic dreams of those who, in the language of Milton,

> "Bawl for freedom in their senseless moods,
> And still revolt, when truth would set them free
> *License* they mean, when they cry—*liberty!*"

* A sermon preached before the House of Lords, January 30th, 1740–1741. The whole of this admirable sermon—which is, comparatively speaking, rarely read or referred to—is peculiarly worthy of being attentively perused and reflected upon at the present day.

Gentlemen, it is in this spirit of affectionate reverence for our free institutions, prompting us to accommodate them, with anxious caution, to the exigencies of the times, that we ought ever to live; not idly dreaming that those institutions are perfect, but believing them to approach already very near to the point of practical perfection; conferring upon us a sense of *security*, which, in these tremendous times, is inestimably precious. Oh, what would not our harassed continental brethren give to enjoy it, to catch a glimpse of it, to escape for a moment from the blighting, bloody haze which surrounds them, amid which they are gasping in the dreadful spasms of Revolution, and in which true liberty is being stifled—to come to this green isle of ours, and breathe, for a while, its air of blessed purity, freedom, and calm! Here we understand the true nature of liberty, the real constituents and conditions of free government. We do not *ignorantly worship*. Our hearts are trained into a patriotism and loyalty which warm, which enlighten, which strengthen the character, and discipline the will. We feel that restraint is essential to the enjoyment of freedom. That which galls and inflames the fiery and untamed natures of others, sits lightly and gracefully on our necks, as the soft collar of social order. All this is due to the agency of law. The national convictions on this subject are sincere and profound. There was recently in this metropolis a magnificent manifestation of them. The sound of it has gone forth into all the earth; the recollection of it yet overshadows our minds. Englishmen acted, on that day, in a calm and solemn spirit, un-

derstanding well—and if WE lawyers did not, who should?—what it was that we had to defend.* "We will not," said we, "have Revolution here! Out upon *violence;* away with it; if our laws must be altered, the alterations shall not appear in our statute-book written in the tremulous hand of fear, or in letters of blood!" Treason and anarchy fled as we said this. And did we not say it? Oh, yes, you and I bore part in that bloodless victory; this very room witnessed, and was dignified by witnessing, the exhibition of that glorious spirit, which is ready again and again to display itself, and in tenfold force: which can never die: and which declares, in the heart-stirring language of our own Shakspeare,

"Naught shall make us rue,
If England to itself do rest but true." †

Such, gentlemen, being a faint, imperfect outline of the general scope and object of law, and of its blessed product, civil liberty, let us bear in mind these leading principles while we descend into details for a moment; into those details, be it observed,

* The 10th of April, 1848, is here alluded to. On that day the metropolis, threatened with a revolutionary movement by a great number of people calling themselves Chartists, who openly avowed their determination to resort to violence in order to gain their objects—viz., the subversion of the present constitution, and the introduction of anarchy—made such an overwhelming demonstration of unity, resolution, and strength, as, when backed by the judicious measures of the government, and the masterly military precautions of the Duke of Wellington, paralyzed the abettors of treason and violence, and occasioned a ridiculous issue of their enterprise against law and order. † King John, Act. V. sc. 7.

with which all of us lawyers, in our respective departments, are, or ought to be, conversant; with which we are daily and hourly practically concerned, while working out the grand system securing such results. We must not lose sight of the whole, in its parts; nor let the spirit evaporate, in handling the letter.

Mark the actual operation of law! The instructed eye sees it in whatever comes in contact with the law: how, to recur to the language of the distinguished jurist whom I have quoted, the dangerous power of *discretion* is limited and restrained, by incessantly withdrawing from it cases, as they arise, in the ordinary affairs and intercourse of mankind, and subjecting them to inflexible rules, prescribed by calm, enlightened, and impartial reason and justice: which, in doing so, are constantly reducing within the narrowest limits, the domain of brutal force and arbitrary will. The law looks with equal eye on all who apply to it, rich or poor, high or low, gentle or simple, dealing out its decrees indifferently, without fear or favor. What is the practical result? The never-ending recognition of its existence and action; the safety of society, the discipline of the will, the self-control, the self-denial of its members, the contented enjoyment of their own, without injuring that which is another's. These are matters very easily enumerated: but what immense difficulty lies in the way of practically attaining and preserving these elements of social happiness, of the community, and the individual! And how are these results worked out? By, it is true, a complicated and artificial system

of jurisprudence. But what has made it so? The free operation of the great principles which I have been pointing out. Each of us is, for instance, so jealous of his rights, that he will have them, when challenged, defined with the sharpest exactitude: we fight for even the minutest fraction of what we conceive to be our rights, whenever we find another challenging their existence, or infringing them. Thus it is that the multiplicity of our laws really springs from the greatness of the liberty which we enjoy. In a despotism, if we were slaves, the law would be fearfully simple; the will of the prince would be the rule of our conduct, with a breath stripping us of property, and consigning us to dungeons, and taking our lives. But here, in a free, well-governed country, we must all of us learn to live, and *let live:* to respect, while enjoying our own rights, those of others. Now to an uninstructed or careless eye, to one fitted

"T' inspect a mite, not comprehend the Heaven,"

our whole legal system appears a sort of chaos, a "mighty maze without a plan," a labyrinth to which we have no clew. Without the light of *principle*, losing sight of grand objects, our law may seem, indeed, an unsightly conglomeration of an infinitude of arbitrary rules. But one who has grasped the subject, can take in the scope of the whole; and he sees, ay, in the minutest matters which can occupy a professional man's attention, the glorious and potent agency of the great principles of justice, the safeguards of liberty. He sees that our laws are, in fact, a vast system of check and counter-check, in every direction. The delicate mechanism

by which the social movements are regulated, is so exquisitely tempered and adjusted, with a view to the harmonious action of the whole, that one may say,

> "Untune one string—and hark!
> What discord follows!"

We are not, perhaps, sensible of the existence of a particular rule, *till we have infringed it*, intentionally or unintentionally, in the eager pursuit of our own interests. But *then* that rule makes itself felt, in its potency; and, however irritated and galled, we must submit, inveighing loudly, it may be, against those whose business it is to enforce the rule, and the paltry nature of that which has been transgressed; unable, or indisposed, all the while, to trace it to the principle on which it is founded, and which may be one lying at the very foundation of the fabric of civil society. One out of a hundred illustrations occurs in the minute and multifarious regulations, which give incessant occupation to the courts, respecting the personal service of Process, of Rules, Orders, and Notices of different kinds; a particular dispute and discussion may have drifted far away from the great principle which regulates the whole; namely, *that no one shall be condemned unheard.* Consider for a moment (I have time to *suggest* only) what is signified by that rule or principle, so tersely expressed, what *is* being "condemned unheard:" and what is such a "hearing" as the nature of the case admits of, and the law is satisfied with—having regard to situations, times, circumstances—to fraudulent evasion? How nearly you may perpetrate rank injustice, and afford a

mischievous precedent, by a hasty decision in apparently a trivial case, an unthinking acquiescence in that decision. What, again, are all the minute and apparently frivolous objections which, every now and then, one hears taken, and pertinaciously argued, to the sufficiency of *Warrants of Commitment and Convictions?* A scientific lawyer sees here in lively operation the grand principles which protect the liberty of the subject—of the humblest as well as the greatest; which, in the spirit of Magna Charta and Habeas Corpus, require, even to a point of scrupulous and painful exactitude, the real cause of taking away a man's liberty, to be made to appear in such a way, that, if insufficient, it will enable the person affected, be he who he may, to recover that liberty, and bring to account those who have wrongfully interfered with it, though but for one instant, and in doing so deter others from similar infractions. In short, lynx-eyed Liberty is with us, eternally spying out snares for her, detecting possible facilities for encroachment, and withdrawing, with a salutary and sternly susceptible jealousy, every case as it arises, from the dangerous power of discretion. *Misera est servitus ubi jus vagum aut incertum.* It is by means of such considerations as these, by referring constantly to principle, and keeping the eye steadily fixed on the *objects* of civil society, that we appreciate the nature of that instrumentality by means of which it exists, that is, the law.

Now this being law; such, a faint idea of its general working, observe its incessant concernment with all of us who live under its supremacy: how it comes home, whether we will or not, to our

"businesses and bosoms;" authoritatively interposing between us and the accomplishment of, it may be, our most cherished wishes: peremptorily saying to us, *This* you shall not do; *That* you shall; Give up the pursuit of *such* an object; You must make amends; You must suffer for what you have already done; Your rival, it may be, your enemy, has the advantage of you, or you of him; A move in this direction beggars you and your family: in *that*, enriches you all. Alas! by the way, interest and inclination may be on this side, on the other duty and honor: the dividing line is faint; you may often pass and repass it with impunity, as far as human detection goes! But let us not be tempted to lose sight of our limits, or confound the provinces of ethics, and law, with the latter alone of which, we have to do. *Interna non curat prætor.* Recurring, therefore, to law, and adverting to what has gone before, I say: here, in short, is the machinery: these are its capabilities; this is its mode of action. But who is to work that machinery?

You, gentlemen: and in the first instance. You are they who act earliest in the administration of this noble and wondrous system. You aspire to enter the ranks of those who, in any given case, first set in motion the machinery: by and through you it is, that the energies of law are brought directly to bear upon us, upon society collectively and individually. Law without lawyers to administer it, may be spoken of as the letter without the spirit; a dead letter, as far as regards the bulk of mankind. It has three grand exponents: *you; the*

bar; the judges; in all of whom the law may be said to live, and move, and have its being: to be truly *lex loquens*. As far as *you* are concerned, remember that you are, I again repeat it, earliest in the field, to apply the law to us, and to our affairs. It is you, who, so to speak, have to deal with the raw material of our sayings and doings, our negligences, errors, omissions, and commissions, our wants and wishes; to whisper in our ears what it is that we may or may not do, however fervent and eager may be our wishes on the subject. Bear you always in mind, that the bulk of society take the complexion and character of the law *from your exhibition of it*. Accordingly as you act and demean yourselves, on such occasions, you may make that law appear a blessing, or a curse; render it detestable as the mere instrument of meanness, trickery, and oppression; or lovely and dignified as the guardian of peace and order; the very visible impersonation of justice, the protector of the weak and oppressed, vindicating the rights of the most abject, and redressing wrongs, though inflicted by the haughtiest and highest of mankind. You exhibit the reality and action of that law which all of us are taught to rely upon, confidently, in all our exigencies, whensoever we appeal to it, and which it is your high office, your vocation, your privilege, to show to be indeed

> "Not harsh and crabbed, as dull fools suppose,
> But musical as is Apollo's lute!"

—Stay, however: are you equal to all this? Are you an instrument capable of discoursing this eloquent music? Nay, but let us think and speak

gravely and frankly on this point. Let us take for granted, for the present, that you have not been, and will never be, guilty of the cruel, the scandalous misconduct of essaying to practice the law, without the requisite amount of professional knowledge; and let us give you credit also, for the present, for sufficient intellectual qualification. Look at the nature of the MORAL DUTIES which will forthwith devolve upon you. And, first of all—

Do not start in your profession, gentlemen, prepared to act on the assumption that one-half the world is trying to outwit the other half. Such a notion is calculated to divert you, at once, from the path of strict rectitude and high-mindedness: to place you in a false position, from which you may take most erroneous and perverted views of human conduct and affairs. 'Tis, indeed, a vile and selfish maxim, that you are to regard every man as a rogue, till you find him honest, and that, therefore, you are to regard him as bent on fraud and circumvention. Human nature, truly, is a fallen nature, and bad enough, but surely not quite so bad as this; and whoever acts on this assumption, is wronging and outraging that nature. *Charity*, my friends, *hopeth all things; believeth all things.* I say, reverse the rule: treat no man as a knave, till he is plainly beginning to show himself such: till then, give him credit for that truth, integrity, and honor, by which you would wish yourself to be actuated, for which you yourself claim to have credit. These are reflections which I can not help thinking it is of real importance for you to bear in mind, in discharging the duties of your profession. They will

give you a sense of independence and calm disinterestedness; will secure your judgment from being warped in the conduct of affairs: habituating you to suspend that judgment, and not act without evidence, simply because you are importuned to do so by an interested, eager, and prejudiced client, who would have you believe that his opponent is every thing that is bad: giving him credit for acting from only the vilest motives; putting on whatever he says and does the worst construction; and committing you, at the outset, by your distrustful demeanor and conduct, to a hostile and offensive line of action, too often blighting at once all prospect of an honorable, amicable, and prompt adjustment of differences and difficulties. Thoughts such as these may contribute to engender in you a temperate, firm, and cautious, but *candid* spirit, which will admirably qualify you for the troubled scenes in which you will too often have to move.

But, gentlemen, let me not be misunderstood. You will frequently see poor human nature in some of its worst aspects: it can not but be so; and it will call forth the exercise of all the virtue, all the Christian feeling, that is in you. To you will come panting revenge; merciless cupidity; hard-hearted avarice; *hatred, malice, and all uncharitableness.* Into your ear will be poured, from time to time, their fierce whisperings against their unfortunate fellow-creatures. To gain their ends, to wound the feelings of an opponent, and secure often some petty advantage, persons employing you will not scruple to violate the sacred confidence of social intercourse; and it will be sought to make you a sure, a willing,

and sharp instrument, in their unholy hands, to gratify their evil passions; to oppress and crush the unhappy and helpless; to pursue, for instance, the hasty utterer of slander, the unthinking wrong-doer, with deadly pertinacity, and consequent cruelty to both parties; when a timely, kind, judicious interposition would have healed the skin-deep wound, and restored peace and amity. *Will* you do these things, my friends? Will you consent thus to demean yourselves, and degrade your office? Nay, but God forbid! You shall, on the contrary, throughout life, remember from whose awful lips fell the words, "*Blessed are the peace-makers!*" You shall say on such occasions, with noble firmness, "I will not do what you demand. I disdain to be the instrument of your vindictiveness, of your over-reaching avarice; I will not be the conduit-pipe of your sweltering venom and malignity. I will not, at your bidding, plunge your debtor into prison, and his family into the poor-house. I will not hurry into the Gazette one struggling manfully but desperately with misfortune, and whom you would prostrate with short-sighted fury. I will not do all this, when I am satisfied that they are unfortunate only, and you cruel and exacting. If you want to crush and to destroy, go elsewhere! I will not abuse the law; I will not plunge its sharp weapons into their hearts, nor prostitute law, in my person, by giving effect to your unjust and tyrannical wishes!"

You will, when brought into contact with clients heated and inflamed by animosity and excitement of any kind, take care not to catch fire from them, but let the first sight of their ardor put you upon your

guard. While they shall see you exhibit no deficiency of interest in their cases, they shall presently discover that you will only not let your equanimity be disturbed, and your understanding confused and perplexed, but will retain them in full play, in order the more effectually to serve clients blind to their own real interests, which, however, you see distinctly: to save them, it may be, from from plunging into litigation, which may have at once a ridiculous and a ruinous issue: litigation which would have benefited you only, and beggared all others concerned. So far from stimulating therefore, you will calm and repress their tumultuous and agitated feelings: you will reason with them; pointing out disastrous possibilities or probabilities, which may have the effect of preventing them taking the *first false step*. They may, perhaps, chafe and fret a little at first, but by-and-by how they will appreciate your firm conscientiousness! They will feel that you have, indeed, thrown oil on the waters, and that by you their own troubled passions have been calmed. Now, it may be, that in all the cases supposed, your client may have had the letter of the law with him; the letter, but not the spirit! No; that was with *you*, prompting you to pursue the course you did: and why? Because you had conceived aright of law; its true principles and holy objects were present to you, while calmly listening to the language of infuriate passion and malignity. You knew why the weapons of the law were intrusted to your hands, and what was the right use to make of them. The letter of the law was with Shylock; and suppose society were all Shylocks! "Then," in the language

of the late Chief Justice Tindal, whose name I mention with affectionate reverence, for he was a great light of our profession, "every man's hand would be against his neighbor; no fancied grievance would be allowed to sink into oblivion; no paltry assault, no petty trespass, would be either forgiven or forgotten, and courts of justice would be occupied with the endless quarrels of the peevish and discontented."* The charm of society would, indeed, be gone; its blooming love would have perished, as under a blight.

It is thus, by instituting and resisting our demands upon, and enforcing our rights against each other, in respect to all the relations and transactions of life, and affairs of business, that you are taken behind the scenes, and see all of us *as we are;* often in all our native deformity of will and charac-

* This passage occurs in a speech of Sir Nicholas Tindal (then Solicitor General), in the House of Commons, (see Hansard's Parliamentary Debates, N. S., Vol. xviii., p. 851; and Mirror of Parliament, Vol. i., p. 436), and the following striking sentences immediately precede and follow it. He was speaking of the fallacy of expecting "cheap law" to secure the welfare of individuals or the public.

"Indeed, law may be had too cheap—and then it becomes an unmitigated evil." After supposing the revenue to become capable of affording justice gratuitously, he makes the observation quoted in the text, and thus concludes:—

"It therefore operates as a wholesome check on the spirit of litigation, that there should be, in law, a dearness commensurate with the exigency which requires an appeal to it —a dearness which, while it does not check individuals in the pursuit of a real right, or impede them in gaining satisfaction for a real injury, is much more beneficial to society, than a cheapness which places law within the reach of every vindictive and malicious spirit!"

ter. You thereby acquire *influence* over us; one sometimes irresistible; one to be exercised for good or evil, according to your own character and disposition. Take care not to abuse that influence! It is on such occasions that you must play the man; being never the slave, nor mere tool, of your client, nor yet his tyrant. You know his secrets; preserve them inviolate. You are acquainted with his embarrassments and anxieties: most tenderly respect them; assist him effectually by your vigilant and firm discretion, and rigid conscientiousness in the conduct of his affairs. For, I repeat, that in almost all our affairs, and in entering into all the various relations of life, we must consult you; place our property in your hands; invest you with a permanent authority over our interests, over ourselves, our wives, children, and relatives, as trustees and executors; fly to you in bitter and heart-breaking domestic dissensions; when suddenly prostrated by some great mercantile misfortune; when our transactions, our speculations, have become too complicated for our own management, and are getting, or have got, into confusion; to you, to *you*, on these occasions we come for your assistance, expecting to find you equal to the task, and having a right to expect it. Has the vile pettifogger fixed his fangs in us? Irritated, insulted, and harassed, we run to you for relief; but what if the pettifogger know the law, and *you do not*, gentlemen though you be, and the wretch have us both on the hip? And observe, that you will often be required to act on the spur of the moment; in cases of great consequence and difficulty, requiring tact, decision of character, clear-

headedness, and knowledge; when you can not consult experienced friends, counsel, or books; yet you must *do*, or abstain from doing; and on occasions when your miscarriage may fatally compromise the character, the property, and the interests of your confiding client. Again, he, as it were, intrusts his very *conscience* to you; for he will pledge his oath in affidavits, answers in chancery, and otherwise, where his own interests are to be served, *through his own oath!* What a solemn responsibility does this entail on *you*, his confidential adviser! All these, however, are critical and delicate matters, which must be dealt with in the three ensuing lectures.

Again, you occupy many important public situations, such as coroners, under-sheriffs, clerks of the peace, vestry clerks, clerks to the magistrates, and so forth; you are the confidential advisers to great public bodies, and institutions, mercantile and otherwise; in all which capacities you transact an immense proportion of the most important business of the public, and contribute to the practical working of the constitution under which you live. Now, does not the bare allusion to all these, satisfy you of the arduous nature of the responsibilities which you are undertaking; and the presumption, the folly, the cruelty, and wickedness of which you will be guilty, in venturing upon them without due reflection? What irreparable and wide-spread injury and misery may you not occasion, by a single act of unconscientiousness, fraud, or violation of confidence; by one error of judgment; by one single instance of professional ignorance! Surely, surely,

these are grave matters, challenging serious attention!

Gentlemen, you have become, or are about to become, members of a body between thirteen and fourteen thousand strong; for such is the number of the attorneys and solicitors of the United Kingdom. What powers and opportunities for good or evil are theirs! I do not stand here to flatter them; they do not require it; I disdain to make the attempt; but I feel constrained by a sense of truth and justice, to say that, fully acknowledging a few sad occasional exceptions, as a body, they are an honor to their country; and considering their incessant and innumerable temptations and facilities for going wrong, with perfect impunity, it is astonishing how seldom we hear of their doing so. How rarely do we find their conduct successfully challenged in our courts of justice, by action, summary application to the court, criminal proceedings, or otherwise! And it is because they are a virtuous body; actuated by a lively sense of rectitude and honor; and, in point of ability, equal to the multifarious exigencies for which they profess to be equal. Their welfare is, therefore, a matter of national concernment; every thing should be done to further their best interests; not to discourage persons of talent, fortune, and position in society, from entering that body; but, on the contrary, to make it worth a gentleman's while to become an attorney and solicitor. Take care, my friends—just standing on the threshold—that you never do any act to sully that fair scutcheon! And how shall you avoid it? Be wise, and be wise in time! Well may

you modestly ask, who is sufficient for these things? You can not become so, except through help from on high! I tell you that your character will be utterly rotten, all your resolution and your efforts abortive, unless under the constant influence of piety and virtue, ruling the heart, and directing the will, on all occasions whatsoever. Oh, let not an immortal spirit bow itself into the dust, forgetful of its high destiny, and becoming *of the earth, earthy.* It can degrade itself, but can not get rid of those awful responsibilities which it has incurred in this transitory scene of probation. Forget not God, but remember him constantly, and obey his precepts. Piety and virtue will give you true elevation of character; can alone extinguish envy, hatred, malice, and uncharitableness; extract the sting from adversity; dignify even failure; and add unspeakable sweetness to success.

Oh, what peace flows into a well regulated mind, from an unshaken conviction that all the sundry and manifold changes of the world, are the direct ordering of Infinite Wisdom and Goodness; but what awe overshadows that mind, from the consciousness that every action, every word, every thought, is exposed to the Eye that sleepeth not—to Him who will hereafter recall every thing to our recollection—

> "Each fainter trace that memory holds
> So darkly of departed years,
> In one broad glance the soul beholds,
> And all that was—at once appears."

Such may be THE GREAT BOOK which is to be hereafter opened before us: Oh, thought unspeaka-

bly tremendous! The lips which now feebly address you, the eyes which see, the ears which hear me, must very soon be dust; but WE can not die—and were they the last words that I had to utter, I would humbly say—let us, in the mean time, strengthen our infirm purposes, let us comfort our harassed hearts, by reflecting on the fatherly injunction which God himself, who is our Father, has given to us: *Keep innocency, and take heed unto the thing that is right: for that shall bring a man peace at the last.**

* Psalm xxxvii. 38.

LECTURE II.

GENTLEMEN:

WHY did I endeavor when last we met, at so much length, and with such strenuous anxiety, to exhibit to you a vivid, but I trust not overcharged, representation, of the arduous, responsible, and highly honorable nature of the duties which devolve on the attorney and solicitor? I stated then, and wish it now to be borne in mind, that the object was two-fold:—First, to prevent you from *rashly entering* a profession, to which you might prove unequal; for which you might be in fact altogether unfitted, even by nature, and in which you might do grievous mischief; and secondly, that having entered it—having committed yourself to it, with what prudence, it may practically be too late to inquire, you might be induced to keep continually present to your mind, both as students and practitioners, the really exacting nature of that profession. I say, students: for it is possible that the word "*Clerk*"—"Attorney's *Clerk*"—may convey, to a superficial and unthinking youth, a sort of notion that he is not at once become a *student;* and every whit as much so, as if he were preparing to enter our walk of the profession; but that he is just—and only, a CLERK: a copyist: a messenger: a drudge, in some office, great or small, where he has no opportunity for *studying*—where no interest is

felt in his professional advancement, and where no means exist for facilitating it.

Nothing is easier than for you to slip into this disheartening, derogatory, and often fatal misconception. The first step taken by one acting under it, is in a wrong direction; and every succeeding one, will carry him further from the goal which he ought to keep ever in view, namely, the becoming capable, within a very few years—five years—of undertaking the responsible management of the difficult affairs of other people—of becoming, in a word, their *other-selves!* All sense of just self-reliance is thus nipped in the bud, and utterly perishes: and the absence of it is made manifest, exactly when its presence is required; a man's unfitness for business, just when he feels, and quakes in feeling, that he ought to be fittest. The occasion is come, and he is not equal to it: having spent five years, a mere drudge—dull it may be, or cheerful, according to his humor; either idly, or with a mere mechanical industry:—having, as I said the other evening, formed an unworthy estimate of his profession, and its requirements, and consequently adjusted his views and conduct to a low standard of action. Begin well, therefore, gentlemen: with attention distinctly challenged, from the very first, to the true nature of your rights, and your duties; your prospects, opportunities, and necessities.

If you look into the best English Dictionary extant, that of Dr. Richardson, you will find the word "Clerk" defined as one who is employed *in learning*: "in learned occupations; or in doing that,

performing those offices, which require some learning or scholarship." It is true that the word has also been used, to designate persons filling situations not within the scope of this definition; to those discharging duties of an inferior and mechanical denomination, as copying *clerks*, and clerks in mercantile and other offices and situations; and it may be applied, in this sense, even to *clerks* in attorneys' offices, who are intrusted with only mechanical duties, required to do implicitly the bidding of others, without being expected, or permitted, to exercise any discretion of their own. But I am speaking, on the present occasion, of such as are *here*, of right; who are *articled* clerks; and are therefore clerks in that liberal and honorable sense, conveyed by the definition above given; who, in short, are *students*, or entitled to be so called; but how far justly, is another matter, and depends upon themselves. The gentlemen whose offices they enter, to become their pupils, expressly and solemnly bind themselves, in terms, each, "by the best ways and means in his power, and to the utmost of his skill and knowledge, to *teach*, and *instruct* his clerk in the practice or profession of an attorney and solicitor;" but of what avail is such an undertaking, if unhappily the pupil be unable, or disinclined, to learn? Now, if a youth is to prepare for the practice of an arduous profession, a practically *learned* profession, really requiring the exercise of an instructed and disciplined mind, surely the first point to be considered by the parents, guardians, relatives, and friends of that youth, is his natural fitness for it, in point of mind, and character. And

nere it is abundantly obvious, that the persons appealed to, ought themselves to have, or take care to obtain, some sound practical knowledge of the nature of the profession; that they may consider deliberately how far it is likely to be suitable to the disposition, character, and qualification, both mentally and morally, of the proposed candidate for admission into it. All this seems obvious enough; yet like many other obvious but important truths, mankind, in their wayward thoughtlessness, too often overlook it: whence the dismal significance of, for instance, a certain well-known saying—"marrying in haste, and repenting at leisure": becoming a partner in haste, and repenting at leisure: entering the law in haste, and repenting at leisure.

Repenting at leisure! Alas! what is implied in it but passing years, many, many blighting years, it may be, of soul-depressing, heart-breaking disappointment, mortification, and despair: all of which may be chargeable on the foolishly thoughtless sufferer himself alone: or his criminally foolish and thoughtless relatives and advisers. Let me, then, say a word or two on this critical preliminary.

Speaking with due diffidence, yet after much reflection, and some years' observation and experience, I think, that in judging of the fitness of a youth for being articled to an attorney and solicitor, I should, *cæteris paribus*, expect a calm and sober temperament, prompting to perseverance and industry, and not likely to be irritated or disheartened by having to encounter difficulties. I should anxiously look for aptness for study: sound sense: clear-headedness: an energetic will: conscientiousness, especially

in respect of veracity, and money matters: and if, in addition to these, I saw an affable disposition, an inclination to candor and liberality of sentiment, a courteous and gentlemanly demeanor and carriage—I would say, I have found the youth who will make a figure in his profession; who will prove himself, in due time, a discreet confidential adviser to even the ablest, the most refined, the most fastidious and exacting, the highest in the land, as well as—mark me—to the very *humblest*: feeling as lively and real an interest in the affairs of the latter as of the former: and never likely to treat with unfeeling indifference or levity, or hear

——with a disdainful smile,
The short and simple annals of the POOR!

Who is likely to shrink from no responsibility whatever, that he ought to bear; not to be daunted by the most formidable obstacles; nor tempted to go astray by the most dazzling opportunities. Far be it from me, gentlemen, to say any thing so ridiculous, as that none ought to enter the profession, unless blessed with such endowments and qualifications: but I conceive, that this is something like the *standard* to be kept before one's eye, on such an occasion: and that the more of these qualities a youth possesses, the better and brighter his prospects; the more he will be likely to start well in the race of life; to ingratiate himself, first of all, with the gentleman charged with his professional education; and with all those whom he will have to encounter in professional and social intercourse, and on whom it is of vital moment for him to produce a favorable impression.

If, on the other hand, I saw that a youth was of decidedly dull intellect; of a sour, ungracious humor and spirit; an unprepossessing appearance and address; of an irascible temperament; or of a mercurial and flighty disposition; acute enough, possibly, yet incapable of close attention; rash, loose, and hasty in what he said and did; prone to exaggeration, even up to the point of disregarding, knowingly, the dividing line between fiction and fact; with a perceptible tendency to tricking and overreaching: I would say, For Heaven's sake, *stay!* Don't send this lad into the law! You are committing a downright sin in so doing; exposing him to great misery; giving him, if he should be able to get into business, either as a partner, or alone the means of doing grievous mischief, and inflicting much suffering, of ruining himself and others! "Look, then, on this picture—and on this:" and let the proposed attorney's clerk approach as near to the one, as he should be at a distance from the other!

The next all-important point is his *education*. If there be any profession which imperiously requires, but at the same time richly repays, the acquisition of a thoroughly sound, practical, liberal education, it is that of the law, equally in your department, and in ours. If this be not evident to the youngest present, he is, as yet, utterly ignorant of the real nature of the legal profession: and if he were here on the former occasion, all then said, was thrown away upon him. Be it remembered that the attorney and solicitor stands, as I said, in the front ranks; is the very first to whom a layman comes, dismayed and confounded by the derangement of his affairs,

of every sort, in every profession, trade, and calling. Whenever his rights are questioned, his interests threatened; when he means to challenge those of others; how tangled and intricate soever the difficulties in which he has involved himself, or others have involved him; whether in respect of scientific discoveries, made available in trades and manufactures, and depending on exquisitely nice distinctions; the most profound, recondite researches of natural and experimental philosophy; whether in the shape of immensely lucrative patents, or copyrights, infringed; the performance of scholarly and scientific engagements, to be *challenged* or *defended;* piracy charged in respect of the most massive products of intellectual exertion, or trifles light as air—a novel, an essay, a song—a single song; in respect of all the mysteries of engineering, and machinery, and chemistry: in short, why should I go on? for, as a great luminary of the law, Sir Henry Finch, long ago truly observed, "That sparks of all sciences in the world, are taken up in the ashes of the law." Now just realize to yourself how the attorney and solicitor gets concerned, practically, in these things. His client—it may be, some distinguished scientific man, whose honor and emoluments, the produce of a life's exhausting labor and thought, are assailed by another, by some one seeking fraudulently to reap where another has sown—flies to his professional adviser in this serious extremity, for his counsel and guidance. And what if he encounter a man of plainly inferior stamp, in respect of acquirement and mental capacity, and quite unable to grapple with the case presented to him: is it likely that the

anxious applicant will intrust such precious interests to such unworthy and unsafe keeping? Or go elsewhere, to some one recommended for his ability, by experienced friends, and who will show at once all the capabilities of a first-rate man of business, and of practical energy: quick at seeing the true drift and bearings of a case; however little acquainted with its scientific *minutiæ*, yet showing such powers of appreciating its general scope and character, as could have been conferred originally by a liberal education, only, and that, too, subsequently improved? I know such a striking and painfully interesting illustration of the truth of what I am saying, as would make an indelible impression on you all, were I to mention it: a case which occurred not many years ago—which, literally, made the fortune of an able attorney, unexpectedly consulted in consequence of the incompetency of the gentleman who had been first engaged, and who fell into a withering despondency, through the desertion, surely a justifiable and compulsory one, of his distinguished client. I had this from the lay-client himself, a gentleman whose eminent name is probably known by all present. One expression of his I well remember. Speaking of his former adviser, he said, "Poor fellow, my case was *too big* for him. He is a very worthy, honorable man, but not educated quite up to the mark." Gentlemen, *verbum sapienti!*

Is it sought to make you all natural philosophers, and great scholars, before being articled as attorneys and solicitors? Oh, no, nothing of the kind—nothing so absurd: but do bear in mind the times in which

we live; when knowledge is so universally diffused, and the results of science are so incessantly intermingled in the ordinary affairs of life, and turned to purposes of practical account and profit, that the members of our profession are compelled to elevate the standard of acquirement and qualification, far higher than sufficed in the days of our good grandfathers and great-grandfathers. And consider what facilities for really first-rate education now exist, almost everywhere, and of which persons far humbler in society—observe—than the classes from whom our profession is usually recruited, most eagerly and successfully avail themselves. Gentlemen, we must not let ourselves be left behind, lest affairs get "too big," too high for *us*, as was the case with the unfortunate gentleman to whom I have just alluded.

I venture to think then, that a youth destined for our profession should, first of all, attend to the acquisition of our own noble language, in its Saxon purity and strength: a language which is overspreading the entire globe; one which it is a matter of great pride, and far greater difficulty, believe me, than is generally supposed, to master. Consider, that the pen of an attorney and solicitor is really scarcely ever out of his hand: what he writes comes perpetually before the public, is read in open court, often on most interesting and important occasions, before keen, practiced, accomplished critics—the judges, the bar, and his own watchful and emulous brethren: in briefs and instructions for counsel; and in those correspondences and negotiations, of every sort, in which he is continually engaged, and in which his performances come under the eye of many

more persons, lay and professional, and those far abler than he may dream of, and are commented upon and criticised by them freely, and sometimes, by opponents, very bitterly. Let, therefore, this matter be early commended to attention, for practical purposes; namely, the acquisition of a correct, clear, simple, and vigorous style of expression. That will be a great point gained. The Latin and French languages are also indispensable, for reasons which surely need not, in this place, be dwelt upon. Look at the printed and written books, records, and documents, public and private, in both languages, which are continually the subjects of examination by all concerned in the legal profession, and which are, of course, as sealed books to one ignorant of those languages. And, as connected with this subject, let me call attention to the propriety of an articled clerk early familiarizing himself with the style of writing, and abbreviations, &c., used in old documents—records, charters, deeds, &c., in ancient English, French, and Latin. This will be of signal service, on many an unexpected occasion, as all know, who are practically acquainted with the profession, and the course of judicial inquiries. A valuable book, "*Wright's Court-Hand Restored*," has recently been republished in a thin quarto volume, and beautifully printed by Bohn, in York-street, Covent Garden. I purchased a copy of it, for a mere trifle, the first time I accidentally saw it; and find it not less interesting than useful. Now, I should imagine that such a work as this, would prove rather an entertainment than otherwise, to an intelligent youth, in earnest in pursuing his profession; and one prac-

tical benefit which it would confer on him would be visible in its often enabling him to appear to great advantage on sudden, and sometimes public emergencies. So much for languages—English, Latin, and French. Let me add, that a neat, distinct, and gentlemanly *handwriting* is a matter of no little consequence, yet too often neglected. I have known many instances in which a bad handwriting, or even one not *readily* legible, has injured, or endangered, the interests of both attorney and client. In one case a long negotiation, conducted most ably on both sides, very nearly to a satisfactory issue, was on the point of being rendered utterly abortive, whereby the clients would have been thrown into harassing and expensive litigation, through the defective handwriting of one of the two correspondents, who, in making a critical and final proposal, wrote two words so indistinctly, that his opponent indignantly rejected the offer, and broke of the negotiation, conceiving the words to be totally different from what had been really meant by the writer, and indicative of a wish to revert to a condition long before abandoned. No answer was returned to the proposal for several days, when, on a casual meeting, the misconception was fortunately discovered and rectified, and a good understanding restored between both attorneys and clients.

All persons having much to do with manuscripts, especially in our profession, can appreciate the force of these remarks. I have had some little experience in these matters, and can speak feelingly. I have, besides, to answer many more letters than is agreeable; and whenever I receive one not readily legible

—much more, if it be really difficult to decipher, I am apt to throw it aside for a convenient opportunity—which may never arrive; or hand it to some one else to puzzle out. How many communications to the great reviews and magazines have been unnoticed, the examination of them indefinitely postponed, or even angrily declined *in toto*, simply because of the repulsive handwriting, requiring a degree of attention and effort which those to whom the manuscript was submitted had neither the time nor inclination to bestow! Some years ago, when I meddled more in such matters than I do now, I threw aside, for reasons above assigned, a manuscript forwarded to me for my opinion on its merits, and forgot altogether that I had received it, till four months afterward, when the persevering inquiries of its writer led to the discovery of the manuscript, which was returned to him, after I had made another vain effort to spell out the meaning of two or three pages. This I told him: he had the manuscript copied out fairly; and it ultimately was published, and no one admired it more than I did.

To return, however, to *your* duties in this matter. I have seen most mortifying consequences follow from the fault against which I am cautioning you; errors in pleadings, conveyances, affidavits, and other legal documents, which have been taken cruel advantage of by opponents who were not always illiberal, but perfectly justifiable, in doing so. The trouble and loss of time which are needlessly imposed on counsel, owing to indistinct or erroneous handwriting, particularly in figures, and the use of the abbreviations "*plt.*," "*dft.*," "*dpt.*," for "plaintiff,"

"defendant," and "deponent," is often greater than might be supposed. I have myself spent many a weary hour in perplexed calculation, in cases involving matters of account, with reference to framing or advising on particulars of demand, and adjusting to them pleas of set off, payment, &c., or taking issue upon them, because the figure 7, for instance, was written like 1, 3 like 8, and the abbreviation "plt." resembled "dft.," rendering confusion worse confounded: and, what is infinitely more serious, these slovenlinesses too frequently lead to nonsuits, and adverse verdicts—or, at least, to expensive applications to amend. I will conclude my observations on this subject by a remark made by a distinguished nobleman, lately dead, to his private solicitor, who told me of it a short time ago. "It is inexcusable in a man to write ill, through haste. He is very *selfish* in doing so; for to save his own time and trouble, he imposes a heavy tax on those of others; and I, for one, always feel indignant when I find myself thus treated."

Short-hand is a valuable accomplishment; one which I have often seen confer such advantages on its possessor, as have made me vow many times that I would acquire the art myself. It enables you to take out your pencil at a moment's notice, and note down *verbatim* words perhaps of infinite importance, and of which it may hereafter prove of great service to yourself and your clients, to have an accurate record. So many instances of the truth of these remarks must be occurring to most of those present, that I shall say no more upon the subject.

The next point to which I invite attention, in

training the young attorney and solicitor, is one which I feel to be of the utmost practical importance; one, in respect of which attention, or negligence, will be followed by beneficial or vexatious and mischievous results, throughout his career; I mean a thorough and ready knowledge of arithmetic and book-keeping—in a word, of accounts. At least three-fourths of his practice involve the necessity of this knowledge. Look, for instance, at the business in the offices in which almost all of you may have been engaged this very day: how much of it was unconnected, in some way or other, with disputed accounts beetween customers and creditors, bankers, merchants, and tradesmen, in this great commercial community? Why, figures are the weapons with which fraud and honesty are here hourly encountering each other: and dull, confused, inexpert honesty, is constantly tripped up and vanquished by sharp, skillful, and practiced fraud: which, in its turn, is often signally discomfited by an acute and experienced master of figures, well versed in unraveling their fallacies and sophistries. It was once said by a great parliamentary financier, that any body understanding figures could make them say, and prove, what he pleased! You will be incessantly called upon to protect your client from such juggling and chicaneries, which you ought to be able to deal with promptly. Never let him go to an *accountant* to unravel accounts, which seem, and perhaps only seem, beyond your own reach, except under special circumstances, and in pressing emergencies. Why should you? Why should *you* not be master of accounts and book-keeping as well

as he, though, from practice, he may happen to be a little more *rapid* in his operations than you? Rely upon it, that you often injure your client's interests in doing so, and seriously compromise your own. Of this I have seen several instances. I know that accounts are not a very charming branch of your duties; but it is one *demanding* your best attention, and from the beginning. If you be but heartily satisfied, early in your career, of the justness of this suggestion, practice will soon make perfect. A glance of your trained eye will detect and expose the fraud of the most skillful swindler's fabricated books: books which might utterly mislead, deceive, and confound another, less expert than I shall suppose you to have become. What innumerable illustrations of these truths must be occurring to all the practical lawyers present! Look, for instance, at the business in bankruptcy and insolvency, and the infamous knavery, by means of these same figures, which it is eternally disclosing! Why do I dwell so much upon this topic? Because, gentlemen, I feel its vital importance to your best professional interests, and to those of the public, and have seen so many cases in which inattention to it, has been followed by the most unfortunate and mortifying consequences. Now it is too much the habit of youth, especially in what are conceived to be fashionable classical academies, to neglect this branch of their studies as distasteful and troublesome, and not sufficiently dignified, forsooth! for their attention; or, if compelled to go through the usual school routine, the moment the scholastic exigency is over, away go ciphering and accounts, book-

keeping '*and all that*,' as being fit only for tradespeople! As though the thoughtless youth were not, in so doing, casting away a weapon most potent in the warfare into which he is destined to enter! Your clients may be great public companies; bankers, merchants, tradesmen, wholesale and retail; their business comes into your hands, generally, in the shape of disputed accounts, sometimes of such intricacy as almost defies unraveling; and if you be not really equal to it, that business will assuredly soon find itself *elsewhere*. For these reasons, it is very desirable that, when a youth is probably destined to the legal profession, the importance of this part of his studies should be early and distinctly explained to him, and continually afterward kept in view.

For the purpose not only of disciplining the mind, but of preparing it to encounter hereafter cases involving scientific knowledge, such as I have already adverted to, it would be highly desirable for the future attorney and solicitor, toward the close of his preliminary general education, to be initiated into at least the *elements* of mathematical knowledge—of algebra and geometry; and also of natural and experimental philosophy. I mean the elements only; as the further prosecution of such studies should depend on opportunity and inclination. Surely the propriety, and indeed necessity, of acquiring *some* sound information on these subjects, however sparing, so it be but accurate and well-remembered, will be obvious, on adverting to the class of cases already noticed: cases necessarily involving such knowledge, and with which you can hardly expect to be able to

deal satisfactorily, either to yourselves or your clients, if every topic come to you with the startling glare of utter novelty. If you be blankly ignorant of even elements, how can you comprehend, and fittingly appreciate the instructions given by your client, and efficiently follow them up? Do you think of being his mere *scribe?* A mere machine, to transmit mechanically his views, and his interests, to others? Is that really safe or creditable? And suppose you find yourself opposed to a professional brother, who is far your superior in these matters, either through longer experience, or natural relish for such pursuits; having given to them an earlier and better sustained attention than you have; at what a sad disadvantage will this place not you only, but your client? And really, to one in earnest about qualifying himself for such a profession as yours, with such numerous opportunities afforded him for displaying superior acquirements, it should seem but a small matter to strive to avail himself of some of the many facilities for acquiring such knowledge, which exist in the present day, especially in the metropolis.

Why should not a youth, for instance, in the latter years of his clerkship, or a young practitioner soon after starting in business, attend a course or two of lectures on Mechanics, Chemistry, and the Steam-engine; if only to become familiar with the phraseology, and acquire a correct general notion of leading principles, sufficient to prevent him from being, or, at least, *showing* that he is, confused and bewildered by the details with which he may be called on to deal? If you have the least doubt

as to the soundness of the advice which I am giving, come into the library, here, to-morrow, and take down any number of the Reports; run your eye over the Index, under the word "Patent," or "Copyright in Designs," and turn to the first case which you will find to have been brought before the court. See what an intimate knowledge of scientific details appears to have been required, and exhibited, by judge and counsel, in dealing with the evidence of scientific witnesses, the validity of patents, the sufficiency of specifications! Now, through whose hands did all those matters come, before finding their way into those of counsel, jury, and judge? Whose, but *yours?* Who was it that had first to communicate with the scientific lay-client, receive his instructions, lay a sufficient case before counsel, get up and prepare the evidence, and draw the brief? Who, but *you?* And whose duty is it to sit in court during the trial, or argument, calmly watching its progress, appreciating a coming pressure, and anticipating it by a skillful suggestion to counsel, or procuring additional evidence to meet it? To see the drift of what is going on, to perceive the real course of the current, does not your own common sense tell you, that you must really know something about these matters? Ask some of your friendly seniors—your own master, to lend you an old brief in some great patent cause.*

* An excellent practical commentary on the text, is afforded by a case (the *Attorney-General* v. *Firmin*) at this moment in the author's chambers. It is that of an information by the commissioners of excise against the defendant, for an alleged breach of the revenue laws, in having in his

Take it home with you; read it over carefully; and I am much mistaken, if it will not alarm a weak mind, but stimulate a strong one into making exer-

possession a large quantity of sweet spirits of niter, into the composition of which had entered spirits of wine, which, it was admitted, had been illegally distilled; but of that fact, it was conceded by the crown, that the defendant was ignorant. The court of exchequer had, shortly before, expressly decided that even had a purchaser known that fact, the sweet spirits of niter which he bought would not be seizable in his hands; "having become a new composition, one which was in itself a well-known article of commerce, not commonly known as 'spirits,' and not adapted for ordinary use as an intoxicating beverage." See *Attorney-General* v. *Bailey*, 1 Exch. Rep. 281. Now, in the case of the *Attorney-General* v. *Firmin*, the defendant, a wholesale druggist of great respectability, was admitted by the crown, as above stated, to have known nothing whatever of the spirits of wine having been illegally distilled, and to have become possessed of the sweet spirits of niter, openly, in the ordinary course of business. The defendant died before the information for the recovery of the penalties from him could be tried; it having stood over to await the judgment of the court in the *Attorney-General* v. *Bailey*. When this latter case was decided against the crown, the widow and executrix of Mr. Firmin applied to the commissioners for the return of the sweet spirits of niter which had been taken from her husband; but they still persisted in their right to retain them, as a seizable article, and filed an information *in rem*, to try the point *de novo!* Very eminent chemists were called at the trial, on the 16th of May, 1848, to prove what was the real nature of sweet spirits of niter (a compound produced by the distillation of spirits of wine and nitric acid, mixed together in certain fixed proportions). The witnesses differed as to whether those two ingredients were only mechanically mixed, or chemically combined; the crown contending, that, in the former case, the spirits of wine might be re-distilled, and were consequently seizable; and that were it to be held

tions commensurate with the exigency which it discloses. The same result may be arrived at, by glancing into any of the treatises on Patent Laws.* Do not slip into the notion that all these weighty matters are to rest on the shoulders of counsel: it is a preposterously false notion. Who set them in motion, but yourselves? What speak they from, but their brief?

otherwise, the revenue might be easily defrauded, and to an alarming and indefinite extent. The Lord Chief Baron put this question to the jury, "Can you say, on the scientific evidence which you have heard, whether this was a case of mere mechanical mixture, without any chemical combination; or are you in such doubt that you can not come to a satisfactory conclusion on the matter?" The jury replied, after a brief consultation, "That the scientific gentlemen who had been called, themselves differed, or doubted; and they, the jury, could hardly be expected to be able to decide, where doctors differed; and therefore, for answer to the question proposed, they said that they could not tell whether the spirits of wine and nitric acid were mechanically mixed, or chemically combined." On this the Lord Chief Baron directed the verdict to be entered for the defendant; observing that he regretted to see the crown persevering with such a case, after exonerating the defendant from all fraud or guilty knowledge; and that when the chemical fact was so exceedingly doubtful, that even their own scientific witnesses could not say that there had *not* been a chemical combination, how could plain merchants and men of business carry on their affairs, if required to possess such knowledge? On this the Solicitor-General tendered a bill of exceptions to the ruling of the Lord Chief Baron, which is now (21st June, 1848) lying before the author, to settle on the part of the defendant.

* The author begs to refer the student to Chapter V., Part 2, Sections 1, 2, 3, of the last edition of the author's "Popular and Practical Introduction to Law Studies," where the topics mentioned in the text, are discussed with reference to the duties of students for the bar.

I can not quit this part of the subject, without suggesting the propriety of making *logic* one of the early studies of those preparing for your branch of the profession. Only consider how necessary it is to have some acquaintance with it, in order to be able to deal successfully with such cases as I have just been speaking of; nay, to deal with any—with all cases—requiring clear and methodical treatment by you, in order to set them in proper order, and in a right direction, for legal adjudication. How charming is it, to the finest intellects, to have to deal with a brief, however ponderous and disheartening in bulk and appearance, which, on being opened, displays the possession, on the part of the attorney or solicitor who drew it up, of those qualifications which I am now urging on you: the language elegant, simple, and nervous; disfigured by no senseless repetitions, no vulgar colloquialisms, by nothing impertinent or intemperate; and *lucidus ordo* shining in every page. How much of the triumph achieved by the most eminent counsel, is not really shared by the framer of such a brief as I am speaking of? And who could not have been surpassed, even if that very counsel had sate down, himself, to draw up the brief from which he was to speak!

In that good old-fashioned book, "Dr. Watts' Improvement of the Mind," you will find much valuable matter for your purpose, written in a plain and perspicuous style. It is a work from which I, for one, have derived many a useful hint in early years; hints which I wish I had never lost sight of. I recollect, for instance, the following passage

making deep impression on me, when I was perhaps younger than any of you; I think it was in my sixteenth year: "A student should labor, by all proper methods, to acquire a steady fixation of thought. The evidence of truth does not always appear immediately, nor strike the soul at first sight. It is by long attention and inspection that we arrive at evidence; and it is for want of it that we judge falsely of many things. We make haste to determine upon a slight and a sudden view; we confirm our guesses which arrive from a glance; we pass a judgment while we have but a confused or obscure perception, and thus plunge ourselves into mistakes. This is like a man who, walking in a mist, or being at a great distance from any visible object (suppose a tree, a man, a horse, or a church), judges much amiss of the figure, and situation, and colors of it, and sometimes takes one for the other; whereas if he would but withhold his judgment till he came nearer to it, or staid till clearer light came, and then would fix his eyes longer upon it, he would secure himself from those mistakes." Now, what can be more calculated to arrest the attention of youth, and set them thinking for themselves, than such a plain, practical paragraph as this? And you will find many such in the work to which I am referring. There is also another work which I strongly recommend, the "Easy Lessons on Reasoning," by Archbishop Whately; a little pocket volume, containing only one hundred and sixty pages. You may all be aware that Dr. Whately is a great master of logic; and this little tractate shows in every page the easy, familiar hand of the master.

The style is so plain, that any intelligent lad of sixteen may understand it, and derive advantage from a study of these "Easy Lessons."

I assure you, that it is difficult to conceive a brief, in some cause of great scientific interest and importance, being properly drawn, by one who knows nothing himself of the matter, or has no logic in his head: and, on the other hand, what a triumph is it to the man who can, and that, too, without unusual effort, frame a luminous and masterly statement of a case; one so terse and lucid, that counsel, however eminent, would be only too happy to present it *in extenso* to the court, or to the jury! I have seen many such briefs, and heard them loudly praised by the most distinguished of my brethren. Aim, then, at this high excellence, and begin your training early: you have undertaken, or soon will undertake, to become fit for these things; and that undertaking is *on oath:* a circumstance which I shall by-and-by take care to impress on you very earnestly. Gentlemen, so sensible has been the legislature of the importance of securing persons of superior education to occupy your department of the profession, that in the year 1821, an Act of Parliament was passed,* offering great advantages to those who should graduate at the Universities of Oxford, Cambridge, or Dublin, namely, reducing the period of five years' service, under articles, to *three.* Surely it was a most praiseworthy and liberal spirit that dictated this enactment! The statute to which I am referring, recites, that "Whereas it may happen that persons who have taken, or may

* 1 & 2 Geo. IV., c. 48, § 1.

take, the degree of bachelor of arts, or of law, at any of the Universities of Oxford, Cambridge, or Dublin, may afterward be desirous of becoming attorneys or solicitors, but may be deterred by the length of service required for that purpose; and it is expedient that the admission of such graduates should be facilitated, in consideration of the learning and abilities requisite for the taking such degree: and Whereas it would tend to the better qualifying of persons to act as attorneys and solicitors, if part of the said service of five years were allowed to be performed in manner hereinafter mentioned." It was then enacted, that a gentleman might be sworn in, and admitted to practice as an attorney or solicitor, after having served under articles for three years only, provided he had previously taken a degree in one of the Universities. This excellent provision has been re-enacted, and extended, by the recent important statute,* re-modeling and consolidating all the laws relating to attorneys and solicitors, to the Universities of Durham and London. By this latter statute it is enacted, that whoever shall have taken the degree of bachelor of *arts* within six, or of *laws* within eight years after his matriculation, and within four years from the day of taking such degree, shall be articled to a practicing attorney or solicitor, in England or Wales, for three years, and shall actually serve under such articles for the whole of that period—(with liberty, in the case of a country clerk, to spend one of the three years, or any lesser period of it, with the London agent of the attorney or solicitor to whom he is

* 6 & 7 Vict., c. 73, § 7.

articled, with the consent of such attorney or solicitor)—shall be entitled, on being examined and sworn, to practice as an attorney or solicitor.

It is a fortunate thing when the golden opportunity of obtaining a University education, occurs to a strong and sober-minded person, destined to occupy your walk of the profession. It confers on him incalculable advantages; but it is posssble that a weak or flighty youth may be greatly injured by going to college, and disabled from afterward prosecuting his legal studies with effect. He may get his head turned, as the phrase is; acquire foolish and false notions of personal importance, and become disinclined to attend to the details and routine of business in an office. I have known several instances in which these good, and one or two in which these evil effects, have followed the sending to college of a youth destined to become an attorney and solicitor.

Thus much, gentlemen, on the subject of your preparatory education: a matter of infinite consequence to yourselves, and those, including your future clients, who are most deeply interested in your successful prosecution of the legal profession.

The age at which a youth should be articled, is a matter on which there exists considerable difference of opinion; but after much inquiry among able practical men, and the best consideration which I have been able to give the question, I venture to name the age of seventeen, as being, except under special circumstances, the one at which he may take that step most advantageously. By that time, something of his real character and capacity

ought to be appearing; and he should have made no inconsiderable progress in acquiring the elements of general knowledge, and should also have undergone some mental discipline. He ought then to be able to appreciate the nature of the position which it is proposed to him to occupy, and the value of the counsels offered to him by those who are deeply interested in promoting his welfare. He may at that age be supposed capable of forming something like an intelligent and independent judgment in the choice of a profession. Seventeen, is far beyond trifling point; and if a youth then acquiesce in his destination to the profession of the law, and not merely yield to the impulse forcing him into it, he has, generally speaking, no right to attribute failure, to any thing but his own misconduct and inaptitude.

The choice of the gentleman under whom he is to commence his career, calls for the exercise of sound discretion; depending on a number of considerations, peculiar to each particular case, and such as I feel ought not to be entered upon here, even if they could be, on such an occasion as the present, dealt with advantageously. Before the determination is arrived at, the matter should receive deliberate consideration—it being borne in mind that a miscarriage here may be fatal. I agree with what was said by the late Mr. Chitty, that the articles of clerkship too frequently do not receive that attention which is due to their great importance to both master and clerk; but are, on the contrary, sometimes so inconsiderately framed, as to contain no provisions against such contingencies as might have

been, and ought to have been, easily foreseen. In the second volume of his "General Practice of the Law," * Mr. Chitty gives several practical suggestions which are worthy of attention, in framing the articles, and tend to provide for the interests of both parties to the contract. One thing I would recommend to the clerk to keep by him, and frequently refer to, namely, a copy of the articles into which he has entered; as well as of the affidavits which will be required from himself and his master, when he applies to be admitted an attorney and solicitor. These may, as it were, serve him to steer by, during a critical part of his voyage; keeping before him constantly what are the reciprocal rights and duties of himself and his master; and what are the requisitions to be satisfied by both hereafter. The salutary provisions recently enacted by the legislature, and strictly enforced by the judges, and others to whom the requisite authority has been intrusted, for securing a proper degree of professional qualification, before a gentleman can be admitted to practice, impose serious responsibilities on the master, as well as the clerk; the former being bound to see that the latter acquires the learning for which he has stipulated, and is qualified to pass through the ordeal of an examination at this Hall. About this, however, hereafter.

I may here observe, in passing, that upwards of a century ago, viz., in 1729, by Stat. 2 Geo. II., c. 23, § 15, an attorney and solicitor was forbidden to take more than two articled clerks, at one and the same time. Whether the object of this restric-

* Page 9, *et seq.*

tion was simply to limit the number of the profession (see § 11), or to prevent gentlemen from taking more clerks than they were able to instruct, I can not say; but the restriction has been continued by the late statute already referred to (see Stat. 6 & 7 Vict. c. 23, § 4).

May I be allowed here to whisper a suggestion to the parent or guardian of one about to be introduced into the profession?

Let him pause for a moment, and look a little ahead: let him imagine the *five years over:* what is then to be done? Is he acting without reference to such an inquiry? Has family, social, professional, or commercial connection been duly considered? Whether the youth is to practice in, or near, the locality where he receives his professional education? Or will he be left as a soldier of fortune, to shift for himself—"the world being all before him, where to choose?" Has provision been made against the sad contingencies of life? Or has the unfortunate youth been started in an expensive, precarious, and overstocked profession, his best years consumed in learning to practice that which the death or misfortune of others may deprive him of all opportunity of practicing, and leave him unfit for any other; unprovided for, and heart-broken, shipwrecked, as it were, at starting, through the over-sanguine thoughtlessness, recklessness, or improvidence of those whom the voice of nature should have taught better things? I only ask the question, and pass on.

Having entered into the office, remember that you ought thenceforth to occupy it as a *student*, by seeing, and helping to transact the business there;

but, observe, not as a servant, a mere runner of errands, or copying clerk; but as a student of the law: your object being to learn that profession by which you are to live for the rest of your life; which you are to practice under the solemn sanction of an oath; from which you are to derive emolument, influence, and reputation, and in doing so, discharge the duties of a very responsible member of society; to acquire that professional knowledge, which will, as I have already intimated, one day be inquired pretty sternly into, by competent authority: as many a gentleman now in this Hall knows to be the case, *or will know*, on Tuesday next:*—that general fitness which may be put severely to the test, on the very first day on which you formally announce to the world your having become an attorney and solicitor; in which capacity some unexpected client may call you in to advise, on a great and unforeseen emergency not admitting of any one else being sent for; it being one of those "*occasions sudden*," against which our great master, Lord Coke, warns the law-student. Those two words should be perpetually glistening before the eyes of the articled clerk; reminding him of the duty which, so to speak, he owes to himself, throughout his clerkship; stimulating him to extract, with bee-like industry, knowledge, invaluable for his own purposes and benefit, from every thing, great or small, that passes around him in the office; tending to develop in him, gradually, that calming and inspiriting sense of self-reliance, which nothing else

* This alluded to the Trinity Term Examination, appointed to take place on the 6th of June.

can possibly beget or, at all events, warrant.—Whatever his hand finds to do, let him do it with his might. Let *drudgery* be a word which never passes his lips, nor enters into his thoughts; for it is too often the mere catch-word of flighty fools. The late Sir Astley Cooper, perhaps the greatest surgeon that ever lived, told me, not long before he died, when giving me some interesting particulars about his early career, that he counted nothing "drudgery" when he entered his profession, to which he gave himself up altogether; doing every thing he could find to do, never caring how disagreeable and repulsive it was; nor whether he did it over and over again; for he reflected that *practice* would make perfect; and by so doing he had seen out, and done better than a good many fine gentlemanly fellow-students! Memorable words, surely! and perfectly applicable to every one of yourselves, standing on the threshold of your professional career. Every instrument you draw, or copy—and be not sparing, by the way, of your copying—every notice you serve; every time you attend public offices, the chambers of counsel, or the judges, or are in court, bear in mind that you are laying the rich seeds of a harvest which you hope, with the blessing of Providence, to reap for your own support and honor in after life. Think "How can I, within a few years hence, be *master*, and direct others, or judge of the sufficiency of their doings, without a cowardly and sometimes dangerous reliance on paid assistants, if I do not NOW qualify myself to do so?" Let considerations such as these, be your solace and support in many an inevitable hour of depressing

fatigue and exhaustion, such as every one of the most distinguished of your seniors and superiors has had to undergo. Believe that the good day will come, and that you are only getting ready for it. Besides, the eye of your master, whom you should ever make your friend, is upon you, much oftener than you think for: the watchful eye of, it may be, an able and a kind master: who will not fail to notice your exemplary conduct, and in due time may give you decisive marks of his approbation and confidence. He may be a gentleman of great influence; a good word from whom may place you well for life. He may say, with a kindly and grateful recollection of your modest assiduity, "He was a good fellow in my office, and I'll show him that I don't forget him." Why, this has been said and done thousands of times; and has opened many a young man's way to fortune. How do you know what proposal he may not think fit to make, at the close of your articles—to one whom he has found uniformly conscientious, respectful, attentive to business, discreet in difficult matters, and displaying real talents and sound knowledge? Instances have come under my own personal notice, several times, in which a young man, not long out of articles, which he had served exemplarily, has unexpectedly found himself, through the generous, but, at the same time, prudent and well-considered confidence which had grown up in his master's mind, concerning him, offered advantages of which he had never even dreamed an hour before. Shall I reverse the picture? No; you may reverse it for yourselves. Heaven forbid that you should take literally what I say! But try to

imagine the consequences too surely following an opposite line of conduct!

I must now hasten to lay before you a few out of many topics occurring to me, which I trust may be found not unworthy of being borne in mind by articled clerks determined to make the most of their opportunities during pupilage.

Never forget that you are, and are bound to sustain the character of, a gentleman; that you are looking forward to enjoying intercourse with gentlemen, in the practice of your profession; with ladies and gentlemen, perhaps, of great refinement, and often of high rank and breeding, of distinguished standing in society, and who may suddenly contract toward you a disgust, from any exhibition of coarseness, vulgarity, or undue forwardness, which may disincline them to communicate with you on their affairs, even though they may think you competent, in point of knowledge and zeal, to attend to their interests.

Avoid every approach to *flippancy*. I know that this is a word of doubtful etymology, and difficult formally to define; yet I am persuaded that the mere utterance of it conveys pretty distinct notions to all present, and may call up before the mind's eye of each the image of some person or other who exemplifies it. Flippancy is always offensive, particularly to the refined, the sensitive, and the fastidious; characteristic of under-breeding and vulgarity; and calculated to detract seriously from the efficacy of what you might be doing otherwise ably and satisfactorily. It may provoke severe and galling rebuke from your seniors and superiors; it irritates an op-

ponent; is likely to precipitate you both into a quarrel; and disgusts clients. The opposite, or rather the contrary, of flippancy exists in a decorous tranquillity, a considerate respectfulness of demeanor, far removed from any thing like pertness, bantering, jocular familiarities, and attempts to be sharp and smart. A man of intellect, of genius, may be witty, and occasionally sarcastic; but unless there be a flaw in his composition, or he have contracted bad habits, in inferior society, he can not possibly be flippant. And let me give you a practical rule to observe, in order to avoid this disagreeable and offensive tendency. Reverently adopting the injunction of the inspired writer, I say—*Honor all men.* Foster the disposition to treat every body respectfully; and never presumptuously give yourself credit for being so superior to others, either in station, or talent, or acquirement, that you may take liberties with them. He who thinks so is a fool; and he who shows by his conduct that he thinks so, is also a jackanapes.

Keep a strong and constant watch upon your tempers, if you would prepare yourselves to secure great advantages, and avoid innumerable vexations and mortifications, during your professional career. Of all the professions and callings in life in this country, none draws such heavy drafts on the temper as ours; and the consequences of dishonoring those drafts are extremely serious. 'Tis a default of the agent for which his principal suffers. Besides this, a man of frail, irritable, envious temperament, may lay his account with hourly wretchedness; for he is continually exposed to trials which only a well-regulated temper can withstand. How many, how

very many instances have I seen of the truth of these remarks! Two I could describe, but for obvious reasons shall not. One issued in brain fever, which ended in complete mental prostration; the other, I fear there is no reason to doubt, in suicide!

Never suffer yourselves to be betrayed into the use of slang expressions; or, above all, irreverent and profane language. The former of these evil habits exposes you to the contempt of gentlemen; the latter, to the displeasure of Almighty God, who has expressly declared that such conduct shall not go unpunished. I know that with great numbers of you—gentlemen strictly trained, and moving in superior society—these cautions are superfluous; but there my be some, and especially among the younger of you, who may find it worth while to take a hint; brought as they, as indeed all of you, often necessarily are, in the course of business, into contact with persons much beneath you in rank, with the mere understrappers and hangers-on of the profession.

Rely upon it, that it will most sensibly and directly contribute to your interests to cultivate on all occasions, both in general society and in the transactions of business, a courteous demeanor, and also a certain gravity of carriage befitting one who aspires to be intrusted with the grave concerns of others. Gentlemen, believe me, every client thinks every thing belonging to himself, and requiring your assistance, important; and if he fancy that he sees in you a trifling and frivolous person, he will deem you unfit for the management of his affairs, even though he may think you sharp and clever.

Whenever you attend a judge at chambers, remember the dignified office of him whom you are addressing, whom you are trying to convince and persuade; that he is a judge of the land, who has attained his distinguished position through superior and long-tried talents, learning, and character; who is familiar with all the details of business, and aware of professional tricks and devices; who is often possessed of consummate accomplishments, and a penetrating insight into character, sometimes concealed under apparent apathy and unconcern, but who may be secretly amused by your airs, or offended by your presumptuous familiarity, though he may not think fit to show it. Be cautious in what you say, on these occasions, and attend to the manner in which you say it; for, ever remember, that your client's interests may be seriously affected by your faults in either respect.

In your professional intercourse with the members of the bar, all I shall say, in this place, on such an occasion as this, and on so delicate a topic, is, that we highly appreciate straightforward independence of manner and conduct in you toward ourselves, and would wish to be treated by you exactly as we wish to treat you, namely, as gentlemen, and concerned, equally with ourselves, in administering law and justice. When either of us, for a moment, forgets that, he is degraded from a high position; and he who does not so forget, has a right to despise him who does. Do not attempt, but neither do you permit, undue familiarity. Should any member of the bar so grossly forget himself, as to attempt to *court* you, to seek to ingratiate himself with you,

and gain your confidence, by illicit means, scornfully repel his advances; for, rely upon it, such conduct only disgraces and injures both parties to it. The heads of each branch of the profession, whose intercourse is one regulated by honorable cordiality and reciprocal respect—indeed, all the high-minded members of both departments—will sternly echo my words, and say that those guilty of such meanness, have forfeited all claim to the title of gentlemen; have done their utmost to bring their brethren into discredit, to sully the honor, and impair the dignity of a distinguished profession.

Sedulously endeavor to realize, on every occasion, great or small, every where, the obligation which rests peculiarly upon you, to observe, to cultivate truth and honor. Remember how seriously, and continually, other people's interests are to be affected by your sayings and doings. By what you say, by what you write, by what you do, or omit to do, *they* are to be bound—*their* rights are to be affected. Scorn equivocation. Scout the bare idea of mental reservation. *Let your yea be yea, and your nay nay*, even in trifles; for a disregard of truth, in trifles, eats slowly at first, but with fatal rapidity afterward, into the whole moral constitution, like a cancer. If you acquire the reputation of speaking at hap-hazard, no one will pay attention to even your most solemn statements, but receive them with galling and humiliating distrust. Nay, even your very OATH may come to be treated lightly; to be received, oh! intolerable indignity, with a sneer and a shrug. And pledge not that oath lightly—no, for the love of God, do not: of Him whom you delib-

erately invoke to witness the truth of what you say. You are often, perhaps too often, called to speak on oath, to make affidavits, and sometimes, moreover, touching matters in which your own conduct is challenged—when you have to deny, or may wish to explain away, some slip, or obviate its consequences. Oh! my friends, in these moments of natural eagerness, *take care!* Pause, before your lips touch the sacred volume, which brings your soul into contact with the awful Eternal, and reflect WHAT IT IS, that you are about to do. I do not even suggest so frightful a possibility, as that you could, under any circumstances, designedly say what is untrue; but beware of swearing positively, to what you do not clearly and positively know. Search your soul upon the matter, and let these considerations be present to your mind, when you are preparing *others* to be sworn. This, however, is a momentous topic, on which I shall speak more pointedly, and at length, in my last lecture.

Preserve absolutely inviolate whatever comes under your notice in the office. You are, as you must remember, expressly bound by your articles to do so. Never talk elsewhere of what passes there, on any pretense; or the confidence reposed in your master by his client will be cruelly betrayed, as well as that of your master in you. Only consider, how frequently important interests may be fatally compromised by the chattering of the lowest underling in an office! How easily might the weakness, the difficulties, of a client's case ooze out to the other side, were not great caution used by those in whom such confidence is necessarily reposed! But *they*

must repose confidence in their turn; and in whom implicitly, if not, by your masters, in their own articled clerks; gentlemen, though a little younger, equally with themselves, or who ought to be so Some years ago, a mercantile case of considerable magnitude, was depending in the Court of Queen's Bench, in which, though the pleadings were unavoidably complicated and voluminous, the merits lay within a nutshell, and seemed to be so clearly with the plaintiff, that he could not comprehend what the defendant meant by persevering in his determination to incur the heavy cost of a trial before a special jury in London. Again and again were the pleadings and proofs anxiously reviewed, but disclosed nothing warranting the defendant's pertinacity. The present Lord Chief Baron of the Exchequer led for the plaintiff, and the late Sir William Follett for the defendant; and, at the plaintiff's consultation, all his three counsel expressed their curiosity to know what the defendant could be about; and the day of trial was awaited with no little anxiety. Now mark! On the afternoon of the day but one before that fixed for the cause to come on, a young clerk of the defendant's attorney was dining at Dolly's chop-house with a friend, whom he was telling of a "great commercial case" in their office, in which Sir William Follett was going to nonsuit the plaintiff because of a flaw in the declaration—a defective breach, in support of which a considerable number of witnesses were coming up on behalf of the plaintiff, from Cheshire. He mentioned what the defect was, and that was distinctly overheard by one of the plaintiff's principal witnesses, whose per-

son was unknown to the speaker, and who, hastening his dinner, started off to the plaintiff's attorney, and told him what he had heard. The attorney instantly drove off to his junior counsel; a second consultation was fixed; the blot was acknowledged to exist, to the consternation of the plaintiff's attorney, a very able and vigilant practitioner, who had bestowed great pains on the case. An effort was made, unsuccessfully, to amend; the record was, therefore, withdrawn, and the witnesses were sent back into the country. The declaration was ultimately amended at a fearful cost, all expenses previously incurred being, of course, thrown away. Before the cause had become ripe, however, for trial, the plaintiff died; the defendant, a foreign merchant, fell into embarrassed circumstances, and the executors of the plaintiff recovered nothing! The slip in the declaration had been made by the junior counsel, a consummate pleader, recently dead, whose large practice occasioned him to draw the declaration, which was long and intricate, in too much haste. This case came under my own personal observation. It is now reported, but for obvious reasons I shall not mention the name of it. It appears to me to be, in several points of view, interesting, and worthy of your attention. It is undoubtedly not one in which your sympathies are likely to be enlisted on behalf of the defendant; but what would his attorney have said, had he known how his opponent came to discover the point on which the defendant was relying? Had that clerk "kept the secrets of his master?" I have heard of several other similar cases. One was an action which excited great pub-

lic interest, but miscarried unaccountably, till the failure was, some months afterward, traced to the same sort of tittle-tattling which occurred in the one just mentioned.

Habituate yourselves, from the first moment of entering the profession, to scrupulous exactitude in money matters, even in your own most trifling concerns, as well as those of the office; for, remember that you are to fill a situation in life in which you will be required to exhibit the sternest sense of integrity, in handling the money and property of others. A flaw in this part of your composition will be fatal; a breath there, may blight; a touch may taint. To avoid this, make it a point of duty—of conscience—to regard property as an article invested with a sacred character, surrounded, as it were, by a wall of fire, and bearing "*noli me tangere*" inscribed upon it, to the eyes of him intrusted with it by another. Influenced by such considerations, eschew extravagance. Practice economy; not a vile stinginess, sheltering itself under an honorable name, but a true, high-minded economy. Show a lively sense of the value of money by spending it with judgment, and never with prodigality. He is likeliest to be scrupulously faithful with the money of others who is not reckless with his own. You are indeed *bound* to avoid an extravagant expenditure, if only in justice to your family; to some parent, it may be, on the sweat of whose brow you are living; who may be enduring, to support you in your honorable position, severe privation; cares which make a young man gray, and turn an old man to clay; and may be looking on you as the mainstay of

his hopes, the bright reward of his slavery and sacrifices, the pattern and example to the rest of his family. Besides, money saved from being foolishly frittered away will prove precious, indeed, when you start in business. Can you tell how your family circumstances may have altered by that time? And in such days as these, too? The funds on which you had reasonably calculated may not then be forthcoming: friends, whom you would have supposed eager to help you, listen to your application for pecuniary assistance with a deaf ear and an averted face, but exceedingly civil speech: at which moment you may be heaving a deep sigh, on reflecting how idly and lavishly you had squandered money which just then would have been almost your salvation. I assure you, that I know, and have heard, of several such instances as these, of repentance coming too late: and of one, where an opposite line of conduct was adopted, and modest frugality rewarded by its possessor's having accumulated several hundreds of pounds, which enabled him to purchase a share in a highly respectable and thriving partnership in this metropolis.

Learn, also, to economize time, which is more precious than money: a fortune to a wise man, mere dust and ashes to a fool. Be methodical in distributing it; make arrangements and engagements leisurely; keep them when made; being punctual as clock-work. The lawyer who is not so, perpetually compromises his own interests, and those of others.

Never do any thing in a hurry. No one in a hurry can possibly *have his wits about him;* and remember, that in the law there is ever an opponent

watching to find you off your guard. You may occasionally be in haste, but you need never be in a hurry; take care, resolve, never to be so. Remember always that others' interests are occupying your attention, and suffer by your inadvertence, by that negligence which generally occasions *hurry*. A man of first-rate business talents, one who always looks so calm and tranquil that it makes oneself feel cool, on a hot summer's day, to look at him, once told me that he had never been in a hurry but once, and that was for an entire fortnight, at the commencement of his career: it nearly killed him; he spoiled every thing he touched; he was always breathless, and harassed, and miserable; but it did him good for life: he resolved never again to be in a hurry; and never was, no not once that he could remember, during twenty-five years' practice! Observe, I speak of being hurried and flustered; not of being in haste, for that is often inevitable: but *then* is always seen the superiority and inferiority of different men. You may, indeed, almost define *hurry* as the condition to which an inferior man is reduced by haste. I one day observed, in a committee of the House of Commons, sitting on a railway bill, the chief secretary of the company, during several hours, while great interests were in jeopardy, preserve a truly admirable coolness, tranquillity, and temper, conferring on him immense advantages. His suggestions to counsel were masterly, and exquisitely well-timed; and by the close of the day he had triumphed. "How is it that one never sees you in a hurry?" said I, as we were pacing the long corridor, on our way from the committee-room. "Because it's so *expensive*,"

he replied, with a significant smile. I shall never forget that observation: and don't *you!*

From the first hour of your entering the office, concentrate your faculties on every matter to which they are addressed. It requires, I know, a considerable effort at the beginning; but when the power is once attained, it confers on its possessor an inconceivable superiority over others. Remember the necessity and advantage of possessing this faculty; and be continually making the attempt to acquire it.

One thing, thoroughly understood in all its parts, will fructify in your mind. Try, therefore, to comprehend the true drift and object of what you do; to form a judgment or opinion of your own on cases prepared for that of counsel; and when you afterward see theirs, it will be highly interesting and instructive to compare your views with theirs.

Never miss an opportunity of going to the courts: of attending the judges; or consultations and conferences with counsel: and cultivate watchfulness of mind on such occasions. Observe how practiced and powerful intellects deal with difficulties: how errors are discovered and rectified: and take a hint from what you see and hear, for the future. In short, on every occasion, wherever you are, whatever you are doing, be persuaded that you are training yourself to sustain, hereafter, RESPONSIBILITY; and, in so doing, laying deep the foundations of your own future prosperity. It is terrible folly, and entails terrible misery—misery (I must remind you again and again) falling *on others* as well as yourselves—to think of these things too late: to be in a fluster and confusion,

all slovenly and superficial, all "at sea," when the moment for calm, discreet decision has arrived. Again, therefore, I say, be wise, and in time. Who will employ such a person as I have just been sketching, as managing clerk? Who will be so imprudent and unjust to his clients, as to take such an one into partnership, thereby enabling him to commit infinite mischief? Who will a second time become the client of one whose being once employed has caused his employer to wince and smart for a long time afterward, from the effects of his adviser's incompetence?

You, who come up from the country for a few months, to complete your education by a glimpse of London practice, set a high value on the precious opportunity, one which may never occur again. To do this, however, you must be influenced by a strong feeling of conscientiousness, such as will enable you to avoid, as it were, *falling among thieves*, in this metropolis, by frequenting scenes of dissipation and blighting debauchery; by wasting your time, and exhausting your energies in excessive visiting, and among even innocent amusements. These six or twelve months are a critical period of a young professional man's life; of that you may rest assured. When you are tempted to go astray, in this vast Babylon of ours, oh, think, my friends, of some fond heart which is at a distance, often thinking of *you!* Of a parent, a brother, a sister, a whole loving family, whose eyes are fixed on *you*, upon

> "that bark so richly freighted with their loves—"

which, if they saw it recklessly urging its way to-

ward the dangerous breakers, shoals, and quicksands of dissipation, would become an object exciting fear and anguish only, instead of pride, and love, and hope! I must, however, conclude.

Remember, from the day on which you first enter, to that on which you quit your master's office, that you are a student: a gentleman, learning a profession very difficult to master; requiring, but, at the same time, richly repaying, great exertions; one in which you are to be incessantly acting—for I can not too often remind you of it—on behalf of others; often in matters of great difficulty and, moment; in which you will be exposed to incessant temptation to go astray; in which you invite a confidence to be reposed in you, which you may shamefully betray; and that confidence you will assuredly betray, if you let the time appointed for acquiring the requisite qualification, pass away unimproved Rely upon it, you will find that Lord Coke was right in what he said of the hopelessness of becoming "lawyers in haste." And, finally, gentlemen, keep ever before your eyes, throughout your *pupilage*, the terms of the solemn oath which you will have to take before you are permitted to enter into practice: "I do swear that I will truly and honestly demean myself in the practice of an attorney or solicitor, according to the best of my *knowledge* and *ability*. So help me God."

Under the pressure of this oath, you will have to practice your profession, for the remainder of your lives. And pray, gentlemen, what is the proper word to designate the conduct of which he is guilty, who VIOLATES that oath, or even FORGETS it?

Reflect deeply and constantly on the terms of that oath; do so as a rational and accountable being. Look through the letter, at its sense and spirit. I protest that I do not know any form of oath more worthy of anxious and profound consideration by him who takes it. See how stringent, how comprehensive it is! Those who framed it were sagacious and experienced persons, thoroughly aware of the grave exigencies against which they were providing. No such oath has been imposed upon us at the bar; though our duties are arduous, responsible and honorable, and we appear more conspicuously before the public than you. There seems to me no good reason why we should be exempted from the necessity of taking such an oath: but, at the same time, it should be borne in mind, that we have fortunately fewer opportunities of going wrong, than you have. Such an oath might, nevertheless, perhaps, make a thoughtless counsel pause, before he lent himself to abet trickery or injustice, or endeavored to conceal and pervert truth, if unhappily he should be asked to do so, by one who had disregarded his own oath. *To our own master*, however, *we stand or fall:* it rests with our own consciences, it depends on our own characters, what conduct we pursue. You, however, have voluntarily bound yourselves down by a sacred oath, which is applicable to every portion of your conduct in the practice of your profession. You are *sworn* servants of the public; and I defy any but a fool, or a knave, to reflect, without an anxiety which will be proportioned to the keenness of a man's sense of honor and conscientiousness, upon the nature of the obligation which he has contracted, who has

solemnly called the Almighty to witness, that he promises, *truly* and *honestly* to demean himself, according to *the best* of his *knowledge* and *ability*, in the practice of an attorney and solicitor.

LECTURE III.

GENTLEMEN:

I WAS unable, in my last lecture, to do more than merely glance at many topics which not only warranted, but demanded, detailed examination and illustration. Some portions of what I had prepared, I was obliged then to omit; and one I shall proceed at once to dispose of, before entering upon another division of the extensive subject with which I have to deal. I am alluding to the early *professional* education of the articled clerk; a matter, of course, of great importance, but one which I must treat briefly and very practically. It is hard to say whether it is more dispiriting to the young clerk, or provocative of contemptuous displeasure to his seniors and superiors, to set before him an elaborately impracticable scheme, or course of reading. Nothing is easier—nothing more ridiculous; and yet it has been done frequently. Influenced by such considerations, I shall content myself with a few suggestions, and mention one or two elementary works, under the impression that a kind and able master, mindful of the engagement into which he has entered, will exercise his own judgment on behalf of the youth committed to his care, and adopt, reject, or modify what follows, accordingly, having due regard to the character and capacity of his clerk.

I am very much disposed to recommend a youth newly articled, to be content, during his first twelve

months in the office, with acquiring a familiar knowledge of the routine of general business; and the ordinary instruments by means of which it is carried on; with, for instance, the different kinds of writs—of process and execution—the forms of jury process, particularly of verdicts and judgments; in short, all the formal entries and proceedings, direct and incidental, in the various stages of an action, or suit in equity—notices, subpœnas, affidavits, warrants of attorney, and cognovits: the common forms of pleading: the usual instruments of minor conveyancing—bonds, mortgages, leases, assignments, &c., &c. He should not only reflect on all these, while copying them, taking special care not to let the *hand* engross the business of the *head*, which may be too easily done, but keep by him some established book of precedents or forms—such as those of Mr. Thomas Chitty, &c., &c., and often refer to the originals there, and ask questions about any thing which may seem difficult or obscure. His master ought, at the outset, to impress upon him the significance and importance of these various instruments: explaining the care and skill with which they have been framed, so as to have stood the test of almost every kind of scrutiny and opposition which ingenuity could devise. He should often be reminded of the vast extent of varied business to which they are applicable. He should be assured that when once thoroughly understood, their application will become easy and even interesting; but that if not early made the subject of real attention—that of an intelligent, well-educated young gentleman—they will always be repulsive and unintelligible. Great stress should

be laid on the necessity of rigorous accuracy, in copying them for actual use. A distinguished friend at the bar, of such great logical power and extensive professional learning, as entitle him to speak on such a subject with authority, said to me a few hours ago, on my telling him that I intended to make the observation which you have just heard, "Pray do; and add, that there can't be a doubt that one of the master vices of both barristers and attorneys, is a neglect of *accuracy:* too often seen, also, in higher quarters!" I myself recollect a case in which an attorney's clerk had omitted *one single letter*, in making the copy of a writ of Capias, to be served upon a defendant, who was clandestinely going off to India, owing a widow lady a large sum of money, which she had lent him! She accidentally discovered, however, what he was about, and instantly communicated with her attorney, in such a state of alarm as may be easily conceived. He was an able and energetic practitioner; and, within a few hours' time, had got a Capias issued against the dishonorable fugitive; and, accompanied by an officer, succeeded in arresting the debtor, just as he was stepping into a steamboat to go to a ship, which was expected to sail from Gravesend on that day, or the ensuing one. You may guess the consternation with which he found himself thus overtaken; but it scarcely equaled that with which the attorney received, early the next day, the copy of a rule, which had been obtained by the defendant, calling on the plaintiff to show cause why the defendant should not be discharged out of custody, on entering a common appearance, on the ground of a variance between

the writ and the copy served: the discrepancy being between the words "Sheriffs of London" in the one, and "Sheriff" of London in the other. Eminent counsel were instantly instructed to show cause, and struggled desperately to discharge the rule; but in vain. "It is better," said the tranquil Chief Justice Tindal, "to adhere to a general rule, capable of application in all cases, than to raise an argument, on every imperfection in a copy, as to the materiality or immateriality of the error, and thereby offer a premium on carelessness."* So the rule was made absolute: the defendant discharged: he went to India: † I sadly fear that he

* Mr. Baron (then Mr. Justice) Alderson said, that if the objection had been that "sheriff" was spelled with only one "f," there might have been some ground for the argument of the plaintiff's counsel, that the word was *idem sonans*, and incapable of misleading. The Chief Justice said, "We know that there are two sheriffs: here the writ is, according to the copy, addressed to one of them: and if the variance between the copy and the original be such as to alter the sense, the copy must be deemed insufficient, whether the alteration be in a material point or not."

† This case arose under the Uniformity of Process Act (2 Will. IV., c. 39), a few months after it had passed: and on the ancient legal rule, *Nemo debet bis vexari pro eâdem causâ*, —the defendant could not be arrested a second time. So long ago as the time of Charles II. it was a rule of court (Michaelmas, 15 Car. 2), "that if a defendant be *lawfully delivered* from arrest upon any process, he shall not be arrested again, at the same time, by virtue of another process, at the suit of the same plaintiff." (1 Tidd. Prac. p. 175, ed. 9th.) A vast alteration in the law of arrest on mesne process, was effected a few years after the happening of the case mentioned in the text, by means of statute 1 & 2 Vict., c. 110 (passed in 1838), abolishing arrest on mesne process, unless

has never made his appearance here again: and that the widow lost all that he owed her, and which, but for this wretched mistake, she would, in all human probability, have recovered. This happened nearly sixteen years ago; and, coming under my personal notice, made a deep impression on my mind. I have a vivid recollection of the vexation and distress which it occasioned to the parties, both lay and professional. Only a year or two ago, a precisely similar decision was reluctantly pronounced in the Court of Exchequer in respect of a similar blunder, the very same letter of the very same word! (See *Moore* v. *Magan*, 16 M. & W. 95). Now, can any thing be imagined more serious to the client, and mortifying and injurious to the practitioner, than such miscarriages? Counsel, also, alas, can make desperate slips of this sort. That eminent conveyancer, the late Mr. Butler, accidentally omitted a single word, "Gloucester," in drawing the will of Lord Newburgh, which deprived a lady, the intended devisee, of estates worth about £14,000 a year!

by a judge's order, founded on the existence of probable cause, to be shown to a judge on affidavit, for believing that the defendant is about to quit England, unless he be forthwith apprehended. (§ 3.) Even under this latter act, however, it appears from late cases, that similar consequences will follow an error such as that mentioned in the text: for a true *copy* of the Capias must be served on the defendant; and "if the plaintiff permit a bailiff or any one else to make a copy, which turns out to be incorrect, he must answer for the neglect of his agent." Per Tindal, C. J., in *Copley and Another* v. *Medeiro*, 2 Dow. & Lowndes 75. Same case, 7 Mann. & Gr. 426. The case of *Moore* v. *Magan* (16 M. & W. 95), mentioned in the text (supra), is also precisely in point.

It was clear that the omission was through a mere mistake, and entirely contrary to Lord Newburgh's intentions: but parol evidence to prove those facts, was unanimously rejected by the judges, and their opinion cordially adopted by the House of Lords; as you will find by referring to the judgment of the late Chief Justice Tindal, in the case of *Miller* v. *Travers*, 8 Bing. 254-5. How fearful are such cases! And, to advert for a moment to a minor consideration, seeing that mistakes of this sort, when committed in the course of litigation, are generally taken advantage of by pettifoggers, on the look-out for, and feeding, on them, the liberal, but hasty practitioner is often cruelly mulcted in costs, in endeavoring to repair his blunder, when reparable; besides being disabled from recovering his bill, and rendered liable to an action for negligence at the suit of his client. I insist, then, upon its being a matter of capital importance, that the young articled clerk should be trained, from the beginning of his career, to habits of rigorous accuracy. The necessity of it should be impressed on him by those interested in his success, again, and again, and again; by those who are not merely interested in his professional progress, and bound to watch and accelerate it, but are also themselves sometimes very severe sufferers through such faults as I am now cautioning you against.

By attentively considering what passes before him in the various common law and equity courts, and public offices, a youth articled in town, or having the opportunity, though only for a short time, of seeing London practice, will gradually become possessed of a considerable amount of practical knowl-

edge; the acquisition of which, at first savoring necessarily of a mechanical, may very soon assume an intellectual character, and become interesting, when aided by judicious reading, by reflection and conversation with his master, or an able and experienced managing clerk. This will develop the reasons on which the various proceedings, already familiar to him, are founded; the object aimed at, the evil sought to be avoided. It is astonishing what a different aspect the profession presents, after only a few months' introduction to it, to the careful and the careless, the thoughtful and the flighty clerk, the pretended and the real student. The one gathers something new and valuable every day, so that his mind is gradually and almost insensibly stored with important practical knowledge; while the other gets worse and worse, ay, from day to day; more and more confused and unfit to be intrusted with business; and, in short, disheartened; grows less and less in favor with his master, and respected in the office; and soon becomes fatally disgusted with the profession which he has—trifled with!

Though the age of seventeen, which I have proposed as proper for becoming an articled clerk, is sufficiently far removed from the period of thoughtless boyhood, still I would earnestly dissuade parents and instructors from requiring the young clerk to fatigue himself by much professional reading, in addition to the work of the office, during the first year or two of his service. It tends, except when a strong desire exists, or superior capacity is evinced, to burthen and depress faculties not yet habituated to long continued mental exertion. If the mind do

really engage itself during the day, with the business of the day, that is, generally speaking, sufficient for the day; and the hours after office attendance should be devoted to innocent recreation and improvement. None, in the way of reading, I may say in passing, can be more interesting, and at the same time practically useful, than English history, which should be read with a sustained conviction of the intimate connection between it and law. Mr. Keightley's history, in three small octavo volumes, is, in my opinion, well adapted for these purposes; being clear, neat, and scholarly in style, impartial, moderate, and enlightened in spirit, and very accurate. The late Mr. John William Smith's "Elementary View of the Proceedings of an Action at Law" may be advantageously put into the clerk's hand, almost on his entering the office, as at once a little book, lucid and simple in style and arrangement, and correct and elementary in its character. It affords an easy key to the formidable books of practice with which he must, by and by, become, and for the rest of his life continue, familiar. Mr. Smith's object was, "to trace, in a simple and intelligible manner, the steps by which the demand of one's right (that is, an action) is, according to the law of England, to be pursued." A new edition of this excellent work has been published this year (1848), with additions, by Mr. Ring, the new matter, found necessary to be introduced to accommodate it to the existing state of the law, being indicated by brackets and notes.

About the SECOND, or toward the THIRD year of service, and afterward, more time should be given to professional reading; and, considering that more

than two-thirds of a lawyer's business relate to CONTRACTS and to PROPERTY, it is obviously of the utmost consequence for the articled clerk to obtain, at an early period, sound notions concerning them. I shall select from the many which have been published, four little works on these subjects, which may, I think, be strongly recommended as better adapted to young students, than any that have come under my notice for many years. The first is the "Lectures," delivered in this Hall, on the "LAW OF CONTRACTS," by the same author just referred to, my late highly-gifted and lamented friend, Mr. John William Smith. This work, a posthumous publication from his own accurate manuscript, which he read, *verbatim*, here, consists of a series of ten lectures, in which the leading doctrines and incidents of every class of contracts are sketched with a masterly hand, and rendered easy of apprehension to the most youthful learners.* These lectures form one thin volume,

* The following paragraph, a fair sample of Mr. Smith's style of lecturing, shows the easy mastery which he possessed over his subject, however difficult; with what interest he could invest it, however unpromising; and how plain he could make it, to even the dullest capacity. He is speaking of the *consideration* requisite, according to the English law, to support a promise; and of the *adequacy* of that consideration.

"Now, with regard to the question—What does the law of England recognize as a *consideration* capable of supporting a simple contract? The best and most practical answer is—Any benefit to the person making the promise; or any loss, trouble, or inconvenience to, or charge upon, the person to whom it is made. . . . Thus, let us suppose I promise to pay B. £50 at Christmas. Now there must be a *consideration* to sustain this promise. It may be that B. has lent me £50:

which was published last year, with illustrative notes by Mr. Symonds, of the Oxford circuit. The next two works are by Mr. Joshua Williams, of the Con-

here is a 'consideration,' by way of advantage to me. It may be that he has performed, or has agreed to perform, some laborious service for me: if so, here is a 'consideration,' by way of inconvenience to him, and of advantage to me at the same time. It may be that he is to labor for a third person, at my request: here will be inconvenience to him without advantage to me: or, it may be that he has become surety for some one at my request: here is a charge imposed upon him. Any of these will be a good 'consideration' to sustain the promise on my part.

"Provided there be some benefit to the contractor, or some loss, trouble, inconvenience, or charge, imposed upon the contractor, so as to constitute a 'consideration,' the courts are not willing to enter into the question whether that consideration be *adequate* in value, to the thing which is promised in exchange for it. Very gross inadequacy, indeed, would be an index of *fraud*, and might afford *evidence* of the existence of fraud; and fraud, as I have already stated to you, is a ground on which the performance of any contract may be resisted. But if there be no suggestion that the party promising has been defrauded or deceived, the court will not hold the promise invalid upon the ground of mere inadequacy; for it is obvious that to do so would be to exercise a sort of tyranny over the transactions of parties who have a right to fix their own value upon their own labor and exertions, and would be prevented from doing so were they subject to a legal scrutiny on each occasion, on the question whether the bargain had been such as a prudent man would have entered into. Suppose, for instance, I think fit to give £1000 for a picture not worth £50: it is foolish on my part; but if the owner do not 'take me in,' no injury is done. I may have had my reasons. Possibly, I may think that I am a better judge of painting than my neighbors, and that I have detected in it the touch of Raphael or Correggio. It would be hard to prevent me from buying it, and hard to prevent my neighbor from mak-

veyancing Bar, and in two small volumes, respectively dealing with *real* property and *personal* property, and expressly designed for students. One is entitled "Principles of the Law of Real Property," and the other, "Principles of the Law of Personal Property." He who shall have really mastered these two unpretending volumes will find, as I think, that he has acquired a fund of valuable information on these important and immensely extensive subjects, which are dealt with by the author in a thoroughly elementary style, and so ably, that few can fail to derive solid advantage from perusing the works in question. They give, in a neat and perspicuous manner, a most interesting and instructive account of the existing, with reference to the past, condition of the law of real and personal property, and that, too, without presupposing in the student much previous professional knowledge. The last of the four works, which I would recommend to your notice, is Mr. Davidson's "Concise Precedents in Conveyancing," a small duodecimo volume (now out of print, but of which a new edition is preparing), consisting

ing the best of his property, provided he do not 'take me in, by telling me a false story about it. Accordingly, in the absence of fraud, mere inadequacy of consideration is no ground for avoiding a contract. You will see two remarkable instances of this in the late cases of *Bainbridge* v. *Firmston*, 8 Ad. & Ell. 745, and *Wilkinson* v. *Oliviera*, 1 Bing. N.C. 490; in which latter the defendant promised to give the plaintiff £1000 for the use of a letter which contained matters explanatory of a controversy in which he was engaged, and the consideration was held not to be inadequate to support the promise." *

* Lectures on Contracts, pp. 87–97.

of about fifty precedents, very terse and lucid in expression and arrangement, and such as, with the excellent "Introduction," can not fail to be practically useful. All the foregoing works, with the exception of Mr. Williams's "Treatise on Personal Property," which has only just (May, 1848) been published, I recommended, a few years ago, in the chapter on the education of attorneys and solicitors, occurring in my "Law Studies;" and have since then seen no reason whatever for qualifying or changing the opinion there expressed. I trust I may be pardoned for saying, with reference to the book last referred to—my "Popular and Practical Introduction to Law Studies"—that you may possibly find there something which you will perhaps not easily meet with elsewhere. I allude to the chapters devoted to a popular and elementary account of the three great departments of English law, as at present existing, civil, criminal, and ecclesiastical. I added those six chapters (viii.–xiii.) to the last edition of the work, because having been frequently asked to point out where that information was to be met with, in a convenient form for students, I found myself unable to do so. Wherefore I did my best to supply what certainly appeared to me a *desideratum;* and, however far short I may have come of success, I may say at least this—that what is to be found in those four hundred pages cost me great pains, and will not, I trust, mislead him who may think fit to peruse it.

Here, however, I must pause, it being beyond my province to lay out a course of reading: a matter which depends at once on the inclination, qualifica-

tion, and knowledge of the pupil, and the disposition and ability of his instructor. It may be as well, also, to have regard to the pupil's destined scene of future practice; whether in London, or the country; whether in seaport towns, or inland, manufacturing and commercial cities and towns; or agricultural districts; or abroad: and prominent attention should be given, accordingly, for instance, to commercial law, or conveyancing. Having mentioned two or three works on the latter subject, I will speak of only two on the former: Mr. Serjeant Byles's Treatise on Bills of Exchange, and Mr. John William Smith's Treatise on Mercantile Law. The former consists of one small volume, correct, condensed, easy of reference in the emergencies of business, and it is of established character. The other is the only work of its kind that I know of—at all events, adapted to the present state of the law—embracing the whole body of our commercial law, excellently arranged, and compressing into comparatively a small compass a vast deal of important matter. The fourth edition has just been published, edited by Mr. Dowdeswell, of the Oxford circuit, containing, in addition to much new matter of his own, rendered necessary by changes in the law since the preceding edition, all the latest additions and corrections of the gifted author himself. I saw them in his own handwriting; for he was sedulously engaged on them till within a few months of his premature death. This last work, however, is one of somewhat formidable bulk, and however excellent, can hardly be considered of a strictly elementary character. In the latter years of pupilage, and

when engaged in business afterward, its value will be better appreciated than it can be by the young articled clerk.

The London practitioner must prepare to occupy a wide field of knowledge. In addition to all that is necessary to be known by one in the country, the former must be familiarly acquainted with the rules of practice of the different Courts of Law and Equity, with which he is to be perpetually concerned, in either his own proper London business, or, as an agent, managing, in London, so much of the business of country clients as requires to be transacted here. If the young clerk's means and opportunities admit of his availing himself of the permission given him by statute * for that purpose, a year, or even six months, spent in a pleader's or barrister's chambers, will be found of great service. There he may see the real drift of much that, without such advantages, he might otherwise have regarded as arbitrary and obscure, and which he would have done merely mechanically; and may gain many a hint, of great practical value, not to be obtained elsewhere, and guiding him in his own practice, in those earlier stages of the matters intrusted to him, where

* Statute, 6 & 7 Vict., c. 73, § 6, enables an articled clerk to spend one of the five years for which he is bound, or any portion of one of those years, "as a pupil, actually and *bonâ fide*; and as such pupil he must be *employed* by any practicing barrister, or *bonâ fide* practicing certificated special pleader, in England or Wales." In addition to, or instead of, doing this, the country clerk may spend the same period with the London agent of his master; but he must do so actually and *bonâ fide;* as efficiently, to all intents and purposes, as if he were serving under his own country master.

better knowledge and a superior style of practice confer such benefit on both attorney and client; enabling their possessor to foresee and avoid, to take precautions which would never occur to a practitioner of inferior pretensions. A year in a conveyancer's chambers is really almost indispensable, especially in the case of one intended to practice in the country. What expense and delay he may avoid, on innumerable occasions, by having qualified himself to draw conveyances with accuracy and dispatch; to deal promptly and decidedly with instruments submitted for his examination into their sufficiency; and to do all this with a cheerful and justifiable sense of self-reliance, which will really tend to lighten the labor, and enhance the enjoyment, of an entire life, instead of a man's being worried and harassed by everlasting anxieties, doubts, fears, and miserable misgivings, occasioned by an incapacity which ought *never to have existed.*

Before quitting this topic—I mean the advantages derivable by an assiduous clerk from availing himself of these facilities for pupilage in a barrister's or special pleader's chamber—I wish to remind him of a small matter of stern significance; that the legislature requires the pledge of an OATH to the reality and *bona fides* of the clerk's service and study under his master, his master's agent, or a barrister, or special pleader. Consider well, gentlemen, BEFOREHAND, the language of the following stringent section (§ 14) of the Act of Parliament, to which I am referring:

"Be it enacted, that every person who shall have been, or shall be, bound as a clerk, shall, before he is

admitted an attorney or solicitor, prove, by an affidavit of himself or of the attorney or solicitor to whom he was bound, or of such agent, barrister, or special pleader as aforesaid, that such clerk hath *actually and really served, and been employed* by, such practicing attorney, solicitor, agent, barrister, or special pleader *during the whole time and in the manner* required by the provisions of this Act, and in the form to be approved by the judges of the court wherein such person shall apply to be admitted."

Consider, I say, beforehand, this oath, which must be sworn truly and conscientiously; and take care how you disable yourself, or others, from so swearing that oath! Would not such consideration stimulate your industry and energy throughout your period of study, through consciousness of being perpetually under the pressure of an oath?

I must not, however, omit to remind you of the valuable facilities afforded you in this place for methodizing and extending your professional knowledge by the use of an extensive library, and attendance on the lectures, which are delivered here, on the leading branches of every department of the law, by gentlemen generally, if not indeed always, selected from the bar. I am personally aware, and have been for years, of the anxious efforts made by the authorities of this institution to obtain the services of gentlemen competently qualified for the office of lecturer. Without being guilty of the bad taste of complimenting my brethren who are your present lecturers (and who must look on my intercalary performances, I almost fear, with a little

of the feelings with which a policeman may be conceived loftily to regard a poor special constable, the one being a regular, the other a volunteer, the one an adept, the other only a novice !) I can not avoid saying that the spot which I now unworthily and temporarily occupy has been graced by gentlemen of distinguished talents and learning. One of them is now living, and, since concluding his labors here, has attained professional rank, and also taken a high position in the senate; I mean my excellent friend, Mr. Walpole; and some are dead, among whom the names of Henry Nelson Coleridge, and John William Smith, can not be mentioned, especially in this Hall, without feelings of deep respect. I for one can not help doubting the utility of lectures in the case of students for the bar; though I own that, in doing so, I am opposed by those whose opinions are infinitely worthier of attention than my own. When, indeed, I reflect that the useful and elegant productions of Sullivan and Woodesan exist in the shape of lectures, actually delivered from the professor's chair; and, above all, that such was the case with the incomparable Commentaries of Blackstone, and those of that masterly jurist, the late Chancellor Kent, of America, I may well hesitate in giving utterance to my own impressions concerning this method of communicating legal instruction, But, however this may be with students for the bar, I think the case is a very different one, indeed, from that of students for your branch of the profession, and could, if time allowed it, assign several conclusive reasons in support of that opinion. It is fitting that the authorities of this institution should afford

every facility for acquiring professional information, to those whom they are intrusted by the legislature, with the responsible and formidable power of *examining*, of passing and rejecting whom they please, if deemed by them incompetent, subject only to an appeal to the judges.

This same examination is one of the most striking and salutary alterations effected, of late years, in our legal economy, and calculated greatly to elevate the standard of personal qualification, in candidates for admission into your department of the profession. Till recently, the judges were supposed to examine into your fitness and capacity: but this was a mere nominal examination, since they acted almost implicitly on the certificate which was given them by the clerks' masters.* Now, however, a totally different system prevails: one, of which many present will, to-morrow, have personal experience, in this very room: where you will appear before a tribunal of five gentlemen, four of whom are persons of high standing and great experience as attorneys and solicitors, and the fifth, who presides over them, is one of the Masters of the Superior Courts at Westminster. These gentlemen are charged with a grave responsibility in the matter: for they will have, in passing you, to "testify" in their certificate that you are "fit and capable to act as an attorney and solicitor." Rely upon it, that they will not lightly so "testify;" for they would be betraying a great trust confided to them: and if, on the other hand, they can not conscien-

* Mr. Maugham's Manual for Articled Clerks, p. 204 (4th Ed.)

tiously "pass" you, and you quarrel with their decision, your chances of success, on an appeal to the judges, are somewhat precarious! The written questions which will be placed in your hands, traverse the whole field of the law. They are, as you know, first, "The Common Law and Statute Law, and the Practice of the Common Law Courts; secondly, Conveyancing; thirdly, Equity, and the Practice of the Equity Courts; fourthly, Bankruptcy, and the Practice of the Bankruptcy Courts; fifthly, Criminal Law, and Proceedings before Magistrates." On each of these heads, you will have fifteen questions proposed to you, to be answered *proprio marte*. I have seen them, and would rather that you had to answer them, than I! Far be it from me to seek to alarm you; but you will find the examination a real one: not unduly severe, but fair and searching, as I have often had opportunities of ascertaining; calculated to test the true extent and quality of your professional knowledge, and to defeat a mere noxious and delusive *cram*—if I may use such a word—for the occasion. For that examination, I trust, that those who must undergo it are well prepared; and I sincerely wish, as I am sure do all of us present, that by this time to-morrow, all anxieties may be over with all of you, and success insured without one single failure.*

But, gentlemen, even if that be so, do not then think of resting on your oars; or, let me say, do

* Ninety-eight candidates presented themselves, on the ensuing morning, for examination. The result was, that eighty-nine were passed, and nine rejected—or rather, "postponed."

not take off your armor when the action is commencing, but determine, in a sober and manly spirit, to address yourselves with greater zeal than ever, to the task of acquiring increased fitness for the duties now devolving on you. Why, indeed, should you not? Remember the stringent oath which you will have taken; I read it the other evening, and now repeat it: "I swear that I will truly and honestly demean myself in the practice of an attorney and solicitor, according to the best of my knowledge and ability, so help me God!" That is, you swear to conduct yourself in every thing, great and small, in your professional capacity, with strict integrity; with truth, honor, conscientiousness; ever fixing your eye on, and faithfully striving to secure, the real interests of your clients, and doing so in a proper manner, and by proper means: and acting all the while, to the best of your knowledge and ability. What is necessarily implied in this last particular, but that you have honestly endeavored to acquire sufficient "knowledge" and "ability?" It is really trifling with your solemn oath, to take it, without having duly considered this part of it; without feeling that you have already made those honest endeavors to acquire adequate knowledge and ability, and are fixedly resolved that you will continue to do so. For what do you mean by swearing to act to "the best of your knowledge and ability," if you are conscious that you have none, or next to none; that you have made, and contemplate making, no real efforts to acquire that knowledge and ability? The Examiners in this Hall will, in passing you, have done their duty, to yourselves, to the

judges, and to the public—all, indeed, that they can do—in making you answer the questions proposed to you; but what if you have only hastily and fraudulently got together just sufficient for a temporary purpose; to pass: and instantly afterward dismiss it from your memory, from which it disappears like breath, from the surface of a mirror? Why, in doing so—nay, in failing to address your best faculties earnestly and persevingly to retaining, and increasing, your knowledge and ability, you are really already forgetting your oaths! And the matter does not end there; for you may ruin those who rely on your acting in conformity with your oaths, and in such reliance alone come to consult you. Let any of you imagine himself established in practice a day or two hence, as you may be: what "*occasion sudden*" may not arise, to test your fitness, or probably demonstrate your incapacity? To advise—to select an instance or two—on exercising the right of stoppage *in transitu*, in an emergency not admitting of delay, or time to consult books or counsel; and if your advice be erroneous, an entire and valuable cargo of your client's property, finds its way into the hands of a mere swindler, or your unfortunate client subjects himself to all sorts of expenses, embarrassments, and dangers, in respect of an abortive attempt which he ought never to have made. So, again, in the case of *lien*, which may be forfeited by acting on your imprudent advice; or, if claimed and enforced erroneously, your client may be subjected to expensive and most harassing legal proceedings. So, again, in allowing him to advance money on insufficient

security; to intrust goods to a worthless debtor, in reliance on a guarantee or representation of credit, which turns out not to be worth the paper it is written on, as being in patent violation of even an elementary rule of law: now these are all occasions (and a hundred others might be mentioned) in which you may be called on suddenly to act with decision; and what would you not *then* give to possess fitness for action?

Take a case which I glanced at in a former lecture; your being sent for in haste, to prepare the will of some one suddenly seized with mortal illness, or who has suffered some dreadful accident, hurrying him to a premature death-bed. It may be a person of great wealth, whose property, both real and personal, is in a complicated condition: whose business transactions are extensive and intricate; who has a large family to provide for. He is suddenly bidden, by the Supreme Disposer of events, to *turn his pale face to the wall.* Haste! Haste! Life is ebbing fast away: his family are weeping around him; but he is waiting for—is thinking of —*you*, in his agony and alarm: he has but an hour or two, it may be less time, to live: he has, with fatal imprudence, delayed making his will till this terrible moment, and *you* are now suddenly summoned, as the nearest professional man accessible. Writing materials are at hand: the medical man has ominously whispered that you have not a moment to lose: and he leaves you for a while with his dying patient. As you look on him, as you listen to him, are you flustered and bewildered? Does your ill-regulated, turbid mind, fail to follow your

unhappy client, so that you do not distinctly perceive his intentions and wishes, intelligible though they really are, for the disposition of his property; do you feel a sickening consciousness that you can not carry them into effect; or do you, perhaps, imagine that you *can*, when you really can not? You draw up, however, a document, professing to secure the interests of many tenderly-beloved children, and other dear afflicted beings dependent upon the testator, and their very sobbings may be audible to you. Having caused that instrument to be executed, you quit the apartment, assuring your client almost at the last gasp, that as far as regards his wordly affairs, he may die in peace; and you depart with his feeble thanks in your ears, the pressure of his feeble fingers on yours; and yet, the instant that the will comes into operation, it explodes, as it were, like a shell! shattering every interest which it touches! It plunges every body and every thing into inextricable confusion; involves those whom your poor client best loved, in ruinous and sometimes malignant and interminable litigation; your blunder is proclaimed, canvassed, and vainly sought to be rectified, in court after court of law, and equity; you are unable to bear the agonizing but unavailing reproaches of those on whom your ignorance or incapacity has entailed such lamentable evils. You dare not go near the grave of him whom you have so dreadfully deceived and wronged!

But let us present a different picture: that of a skillful, self-possessed, experienced practitioner, thus suddenly summoned to the chamber of death; who will not suffer himself, in whatever *haste* he may

have been sent for, to be-in a *hurry:* whose practiced faculties take in, with a word or two, the leading wishes of his dying client, which, in a few correct and comprehensive sentences, he can carry into effect —perhaps having such a will at once executed, and immediately proceeding to draw up one more fully and distinctly providing for the suggested contingencies, and which the dying man may live long enough to execute; and either instrument is framed in strict accordance with statutory requisites, and the rules of law, governing the devise and bequest, of reality, and personalty. Or mark—have you sufficient knowledge to enable you, in such an emergency, having heard the difficult, and it may be almost impracticable and inconsistent wishes and intentions of your client, to tell him with calm confidence, to harass himself no more, for that the law will make an infinitely better will for him, than he can make for himself? *Will it?* Do you then familiarly know the provisions of the statute of distributions, and have you rapidly and accurately applied them to the state of his property, and of his family? And may that troubled soul be indeed relieved from all further agitation and anxiety on that score—address himself with what calmness and comfort he may, to his religious duties—speak love and peace to those dear beings who are so soon to be in the presence of only "his darkened dust," so that when the black curtain has fallen, separating, forever, the living from the dead, you have no cause for doubt or fear, nothing to reproach yourself with; no "curse not loud, but deep," to prepare for; but your poor client may indeed rest in peace; those whom he has left behind

him will surely enjoy, through your able instrumentality, the fruits of his life's industry, regarding you as their friend and protector; and you feel that you have nobly discharged your solemnly sworn obligations, and proved yourself equal to that grave "occasion sudden."

Now, is all this false or exaggerated? Why, it is to provide, as far as practicable, against such contingencies, that you are to be examined here to-morrow; for, verily, all that I have been describing, may happen to any one of you the very day after you have sworn your oath, taken out your certificate, and published your name to the world as an attorney and solicitor, thereby saying that you have become "*sufficient for these things;*" and the persuasion, the certainty that such may be the case, ought to speak, as it were, trumpet-tongued in the ear of a conscientious clerk from the first moment of commencing the study of his profession. Good resolutions and desperate exertions may *come too late*, when the arrow is flown which transfixes your reputation, that arrow having been shot by yourself!

Having now conducted you to the point at which you may invest yourself with the responsible character of attorney and solicitor, and assuming a thoroughly well-spent clerkship entitling you to feel confidence in commencing the practice of your profession, I wish you to pause for a little, and deliberately reflect upon one subject intimately connected with, and materially affecting, that confidence, and your right to entertain it I mean, *the nature and extent of the use which you are to make*

of the services of members of our department of the profession—of counsel.

It is indispensable for you to entertain just and sound notions on the subject, for they will have a direct and powerful influence upon your own character and position.

"He who is his own counsel has a fool for his client," is an old and homely saying, embodying the results of long and nearly uniform experience. In our courts, persons engaged in litigation may appear and conduct their causes personally, if they choose; but, as Chancellor Kent, of America, justly observes,* this is a right (he calls it a privilege conceded) which, though in itself reasonable, is, upon the whole, useless; for the necessity of a distinct profession, to render the application of the law to every individual case easy and certain, has always been felt in every country under the government of written law. As property becomes secure, and the arts are cultivated, and commerce flourishes, and when wealth and luxury are introduced, and create the innumerable and apparently infinite distinctions and refinements of civilized life, the law necessarily and gradually assumes the aspect, and acquires the character, of a complicated science, requiring for its application the skill and learning of a particular profession.† This is a truth so self-evident, as to be acquiesced in by all sane persons, except in the few cases where overweening and conceited confidence in their own powers has occasionally led persons to contribute, by their sad experience, evidence in support of the truth of the ugly-sounding proverb just quoted; which really

* Kent's Comm. on Amer. Law, vol. i., p. 307. † Ibid.

signifies, first, that when a man's own interests are at stake, his natural eagerness and anxiety are alone sufficient to disable him from efficient action, and operate as disturbing forces upon his interests; secondly, that, besides this, he presumptuously essays the use of weapons with which he is not acquainted, and, too, against those who are. For these reasons, gentlemen, you and we are installed in our present position; and captious laymen may say that we are tolerated as necessary evils! However this may be, and however unlikely it is that we shall hear such language from those laymen, who, by our exertions, are successful, and victorious over their rivals and opponents, here we are; both of us agents on behalf of principals—both of us advocates, who have chosen different kinds of duties to perform. Now see how summarily the late venerable American jurist already quoted, disposes of *you!* "The division of advocates into attorneys and counsel, has been adopted in America, from the prevailing usage in the English courts. The business of attorneys is to carry on the *practical and more mechanical parts* of the suit; and of counsel to draft or review, and correct the special pleadings, to manage the cause at the trial, and also, during the whole course of the suit, to apply established principles of law to the exigencies of the case."* I am not sufficiently acquainted with the functions exercised by our American brethren, who will, doubtless, have an opportunity of seeing what I am now saying, to judge how far their late distinguished chancellor's description of the scope of their duties, is correct; but I beg

* Kent's Commentaries on American Law, vol. i., p. 307.

to assure them that it is utterly inapplicable to *you* —to the attorneys, solicitors, proctors, law agents, and writers to the signet, of the United Kingdom of Great Britain and Ireland. Here, it sounds almost absurd to speak of your professional duties, even in *litigation*, only as "merely mechanical." If, indeed, it be so, I have wholly misconceived the case; and a large proportion of what you have heard, and may yet hear from me, must be discarded as false and erroneous. And if so, what is the meaning of the examination which you undergo in this Hall? Why are questions proposed to you which touch the very heart of law—its principles and doctrines?

But, gentlemen, while I thus venture to intimate a doubt as to the propriety of the American commentator's description of attorneys, I must not lose sight of our own illustrious Blackstone, whose "Commentaries" contain passages which may have suggested that just quoted from Chancellor Kent. I can not help thinking that our own commentator, speaking, it must be borne in mind, nearly a century ago, mentioned your branch of the profession in a tone of haughty disparagement, which, if conceivably justifiable then, is certainly not so now, and I prophesy will become less and less warrantable every year. He speaks with scorn of a student "dropping all liberal education, being placed at the desk of some skillful attorney, in order to initiate them early in all the depths of *practice*, and render them more dexterous in the *mechanical part* of business;" the very words, you see, adopted by Chancellor Kent. He speaks again, elsewhere, in the same tone, of "submitting to the drudgery of servitude, and the

manual labor of copying the trash of an office."* Gentlemen, this is not the tone adopted by the *legislature* concerning you, in either ancient or modern times. Proof of the latter part of this assertion I have already given you; and with reference to the former, Blackstone himself, in another part of his "Commentaries,"† quotes several ancient statutes, passed with a view to secure far higher qualifications than would be requisite for the discharge of such purely "practical" and "mechanical" duties as Blackstone and Kent seem to speak of. One of those ancient statutes was passed nearly five hundred years ago (stat. 4, Henry IV., c. 18), enacting, as Blackstone correctly states, "that attorneys should be examined by the judges, and none admitted but such as were *virtuous, learned, and sworn to do their duty;*" and has not the legislature continued in that humor, of that opinion, down to the very last statute passed concerning you: the 6 & 7 Vict., c. 73? And even the old act, just cited, commences with a recital that some of the attorneys of that day (A.D. 1402) were "ignorant, and not learned in the law, as they were wont to be before that time." Gentlemen, I say, away with such derogatory and even dangerous notions as are conveyed by the passages to which I have been alluding; notions degrading you, indeed, from the high and responsible position which you are entitled to occupy, and which you have sworn to qualify yourselves for occupying. You have a large DISCRETION to exercise, on most anxious occasions, requiring well-trained understandings, liberal education, and correct and exten-

* 1 Blackstone's Commentaries, pp. 31, 33.
† Vol. iii., p. 26.

sive legal knowledge. The duties of counsel are also arduous and most responsible, and, generally speaking, they commence where yours end. They are expected, and bound to possess such knowledge as shall enable them to assist you in advising your clients, when difficulties exist which it would be unreasonable and ridiculous to expect you, with your incessant and multiform occupations, to deal with: which you have not leisure for: which we have; and we have prepared ourselves, or are supposed to have prepared ourselves, to deal with such exigencies. When matters get out of the usual course, involve the doubtful application of old or new rules and principles, and are really intricate and perplexed, these are the cases in which you are entitled to come to us, and have a right to expect sound advice. But ought not your own knowledge to be such as, first of all, to enable you to perceive what *is* really a fitting occasion for resorting to counsel; and secondly, to judge for yourself of the sufficiency of their advice, and not blindly and implicitly rely on it, because it *is* the advice of counsel? How often are the more able and experienced of your seniors so much dissatisfied with an opinion, that they require it to be thoroughly reconsidered, either by him who gave it, or by another of greater ability, learning, and eminence? Need I say that counsel are, equally with yourselves, liable to error, to misconception, especially when harassed and overwhelmed by excessive calls upon their faculties, practiced and powerful though they may be; and that your clients have a right to expect you to sit, as it were, in judgment on your counsel. Can you do so, if you are content with limiting your ex-

ertion and qualification to the "mere practical and mechanical parts" of a suit? I recollect a patent case, in which the late Sir William Follett and I were required to give an opinion, and did give it after much consideration. A few days subsequently, Sir William Follett called me aside at the Privy Council, and told me that he had the day before seen our client, who had suggested to him a difficulty, far removed from practical details, which had not occurred to us, but of which Sir William Follett said to me, very emphatically, "It quite *teases* me! We must look into it again;" and more than a week afterward he returned to the subject, saying, "The more I think of it, the uglier it looks!" It happened, however, that no further steps were taken in the case by our client's opponent, so that there the matter ended. If the threatened attack on him had been persevered in, and our opinion had been erroneous, the consequences would have been, to him, disastrous indeed. Again, suppose you have not sufficient general or professional knowledge to enable you to lay a proper *case* before counsel, so that you can not put him in possession of the true point in dispute, not really seeing it yourself, or, though possibly seeing it, are unable to present it clearly and intelligibly, what will be the consequence to your client? Suppose, after failure in his cause, he not only refuse to pay your bill, but sue you for negligence, and submit your defective "case" or "brief" to the scrutiny of his counsel, who pronounces against you, and further proceedings are successful! In such case, you must either compromise, at a sad pecuniary sacrifice, or take the chances

of a verdict, or of defeating other legal or equitable proceedings against you; incurring, then, all the perils of public exposure, and impugned professional capacity.

You may gather from what I have been saying, that there is a marked distinction between your duties and ours, one which I need not further indicate, but concerning which I may repeat, that great intellectual exertion, and a high degree of professional and general acquirements, are requisite in each of us, to exercise our respective functions, satisfactorily. Now, in the United States of America, the same person combines both classes of duties, is attorney and counsel. Though Chancellor Kent states that there is an exception to this, in the Supreme Court of the United States, I find that, however it might have been at the periods (A.D. 1790–1801) to which he refers, this distinction no longer exists practically in even the Supreme Court; since I have, within these few days, spoken on the subject to an accomplished member of our profession, practicing in New York, who assures me that he himself is an instance of one practicing in this twofold capacity, in the Supreme Court of New York. With a sincere respect for our American brethren, whose scientific development of our own law I, for one, have always heartily acknowledged and applauded, in common with the general body of my brethren, and also of the judges, I can not but express my surprise that the distinction between the two branches of the profession should be thus disregarded in America. I adhere to the opinion which I have elsewhere expressed, that this is a very anomalous

condition ;* this union, which ought rather to be called a confusion, of incompatible characters, qualifications, and duties. Thus it is viewed in this country ; where, I think I may say, that but one opinion on the subject prevails throughout the entire profession. • Such was the opinion of the Court of King's Bench, in 1779, when it was presided over by the great Lord Mansfield. In the case of *Ex parte Cole* (1 Douglas, 114), it was expressly decided that if an attorney, struck off the roll, at his own desire, afterward come to the bar, he will not be re-admitted to practice as an attorney, till after he shall have been disbarred by the society which called him to the bar. A few years ago, viz., in 1845, the Court of Queen's Bench expressly recognized the validity of this decision ; and acted upon it, at the instance of the authorities of this institution ; who, with a vigilant anxiety to uphold the credit and honor of both branches of the profession, opposed the admission to examination here, of a gentleman who, at the time of serving his articles, had been a barrister : and the court ratified their refusal, even though the applicant, a gentleman admitted to be of spotless honor and integrity, had been disbarred, before applying to be admitted an attorney. " It is against principle," said the Solicitor-General, " and evidently tends to endanger the correctness of practice, that a party should be ready, at one and the same time, to perform the functions of a barrister, and seek admittance as an attorney." This reasoning was adopted by the court. " The

* Popular and Practical Introduction to Law Studies, p. 52. (note) 2d edit.

case is perfectly new: and it is our duty to inquire, in a doubtful case of this kind, whether the course adopted is one which ought to exist, and to become a precedent. I think," continued Lord Denman, "it ought not. The danger to which it leads, is great and manifest, and we are bound to take care that no opportunity may be given for malversation, through the connection which may exist between barristers, and gentlemen in the other branch of the profession. Exercising the discretion vested in us, it appears to us that we should be wrong in allowing it to be doubted for a single moment, that the practice in question can not be permitted; and that a person whose service as a clerk has been performed while he was a barrister, can not avail himself of such service, for the purpose of being admitted an attorney." *

Thus, gentlemen, we have our respective provinces clearly marked out, and are bound to know how to occupy them properly. Distinct as those provinces are, however, you and we are, necessarily, most intimately connected together in professional intercourse, one to be regulated, as I said on a former occasion,† by gentlemanly feeling, by a nice sense of honor. We are both engaged on behalf of the same client; both act in the cause of law and justice; both are bound to advance, as far as in us lies, the interests of the public, which confides so much in us. But to gain these ends, it is necessary that you should distinctly understand the true relation in which you stand, with regard to ourselves. For this purpose, I entreat you to cherish a lively sense of personal responsibility, such as will keep

* *Ex parte Bateman*, 6 Q. B. 853. † *Ante*, p. 80.

your mental faculties in healthy vigorous action. What I mean is exactly this: do not shrink from coping with difficulty, but always encounter it, in the first instance, patiently and resolutely, with your own best energies. Take care how you habituate yourself to relying on others, to leaning too much, too frequently, and implicitly, on the advice of counsel. An inclination, or tendency this way, a habit of this sort, will soon sap the foundations of self-reliance, and injure the tone of your minds. It will relax and unstring your energies, which may be unable to recover themselves. Distinguish between the self-distrust, springing from a manly, modest conscientiousness, and one sprouting out of a rank, cowardly indolence. Wrestle, gentlemen, with difficulty, *yourselves;* that is, if you have trained yourselves to do so; put your own shoulders to the wheel: exercise your own faculties, independently; or you will soon get timid, and unable to do so. Counsel are sometimes consulted on matters with which you ought to be really as familiar as they, possibly even more so, as lying properly within your province: and you are occasionally disallowed, on taxation, and fail to recover from your own client, fees which you have paid to counsel, in cases deemed, by the proper authorities, such as not to have warranted your incurring the expense of consulting counsel. You see that I am here speaking manifestly against my own and my brethren's interest; but it is because I feel bound by a sense of duty to do so, and am certain that they concur in what I am saying. Where real difficulty exists, or where there may be, though not much difficulty, interests

of great magnitude at stake, or you have to deal with a captious, exacting client, then consult counsel, without hesitation: and that, too, whether your fee be disallowed or not, that they may share, and relieve, your oppressive responsibility. Bear in mind, however, that you can not shelter yourself from the consequences of negligence or incapacity, by having consulted counsel. Remember the terms of your oath, which binds you to act "to the best of your" *own* "knowledge and ability." By this you are pledged, not merely to the *acquisition* of knowledge and ability, but to the best possible *exercise* of it. No trouble, no difficulty, can deter or daunt a conscientious practitioner from doing so. He will not devolve upon others, what he feels and knows that he ought to do himself: and in this, he will not be guided by paltry considerations of inadequate remuneration. What your hand finds to do, you must do with your might, simply because you have undertaken to do so; and if you flag, your client may pat you on the back with the heavy hand of the law, and somewhat unpleasantly quicken your tardy movements!

The late Lord Chief Justice Tindal, in delivering a well-considered judgment of the Court of Common Pleas, in the case of *Godefroy* v. *Dalton*, 6 Bing. 460 (which was an action for alleged negligence, against an attorney), thus cautiously, and at the same time clearly, laid down the law on this most important subject, in words which might be advantageously written out, and hung up, framed and glazed, in every attorney's office in the kingdom:

"It would be extremely difficult to define the

exact limit by which the skill and diligence which an attorney undertakes to furnish in the conduct of a cause, are bounded; or to trace precisely the dividing line, between that reasonable skill and diligence which appear to satisfy his undertaking, and that *crassa negligentia*, or *lata culpa*, for which he is undoubtedly responsible.

"The cases, however, which have been cited and commented upon at the bar, appear to establish, in general, that he is liable for the consequences of ignorance, or non-observance, of the rules of practice in the courts in which he practices; for the want of care in the preparation of the cause for trial; or of attendance thereon with his witnesses: and for the mismanagement of *so much of the conduct of a cause as is usually and ordinarily allotted to his department of the profession.* While, on the other hand, he is not answerable for error in judgment, upon points of new occurrence, or of nice or doubtful construction, or of such as are usually intrusted to men in the higher branch of the profession of the law.

"We lay no stress upon the fact *that the attorney had consulted his counsel* as to the sufficiency of the evidence; because we think his liability must depend upon the *nature and description of the mistake*, or *want of skill* which has been shown; and he can not shift from himself such responsibility, by consulting another, *where the law would presume him to have the knowledge himself.*"

How weighty and suggestive is every one of these words! And a corollary of great practical importance may be drawn from them; namely, that while an attorney or solicitor can not devolve his

own duties on counsel, neither can he safely assume those of counsel—in other words, he must take care not to trespass on their province. If he do, and he sometimes does, from an honorable wish to save the expense to his client—if, I repeat it, he do thus transgress, and should stumble, that very client may, for that very act, well meant, though it may have been, turn round upon him, and make him smart severely! Do not, however, imagine that the judges are astute in discovering pretexts for making you liable in respect of your miscarriages. They are, on the contrary, most anxious to extend to you the amplest protection, consistent with the fair rights of your clients, and the interests of the public. Were it otherwise, indeed, no gentleman, as was long ago said by one of the judges, in a case of this kind, would ever be found bold enough to undertake the duties of an attorney or solicitor. Listen to the language of that glory of our profession, Lord Mansfield:

"That part of the profession which is carried on by attorneys, is liberal and reputable, as well as useful to the public, when they conduct themselves with honor and integrity; and they ought to be protected, when they act to the best of their skill and knowledge. But every man is liable to error: and I should be very sorry that it should be taken for granted, that an attorney is answerable for *every* error or mistake, and to be punished for it by being charged with the debt which he was employed to recover for his client, from the person who stands indebted to him.

"A counsel may mistake, as well as an attorney.

Yet no one will say that a counsel, who has been mistaken, shall be charged with the debt. The counsel, indeed, is honorary in his advice, and does not demand a fee; the attorney may demand a compensation. But neither of them ought to be charged with the debt, for a mistake.

"Not only counsel, but judges may differ, or doubt, or take time to consider. Therefore, an attorney ought not to be liable in cases of *reasonable* doubt." *

At the same time that the courts in our day, have shown no inclination to depart from the just and reasonable principles here laid down, it can not be denied, that there have been several cases decided in late years, from which it is manifest that the judges are resolved to keep you, if I may so speak, up to the mark, in respect of professional knowledge and conduct; to exact from you a complete observance of the oath which you swore on commencing practice. I think that some of these decisions are rather severe upon you; but they should operate as a salutary caution and stimulus to exertion.

Look, for instance, at the case of *Stannard* v. *Ullithorne*, 10 Bing. 491. There, an attorney was employed by a vendor, to effect the assignment of a term of years; and, without sufficiently considering the *qualified* covenant for quiet enjoyment under which his client himself held, permitted him to enter into a *general* covenant: the consequence of which was, that on his assignee being some time afterward turned out of possession, having been pre-

* Pitt *v.* Yalden, 4 Burrows, 2061.

viously subjected to two successive actions of ejectment, which he had in vain resisted, at a heavy cost, the assignor was at once sued by his assignee, and compelled to pay heavy damages: on which the former brought two actions in his turn (*vide supra*, and 1 Bingham's New Cases, 326), against his attorney, and recovered against him to a very serious amount, in costs; and this, notwithstanding it was found that the client had been aware, at the time of executing the assignment, of the fact, in respect of which he afterward incurred liability on his covenant. "It was the attorney's duty, nevertheless," said the court,* "to have given his client those explanations which would probably have prevented him from executing a covenant which involved him in such heavy consequential damages." It is impossible to quarrel with this decision: there had been undoubted negligence exhibited: perhaps the result of *hurry!* But is not such a case pregnant with instruction to you? With what lynx-eyed vigilance would that defendant, after having been punished so severely, scrutinize every covenant for quiet enjoyment, nay, every covenant and clause in every instrument which he might *thereafter* have to prepare! And bear you in mind, gentlemen, that same case of *Stannard* v. *Ulkithorne*, in framing, or advising on every instrument which it may fall to your lot to prepare, or suffer your clients to execute.

I can assure you, in the name of my brethren, that there are no cases which occasion us at the bar more pain and anxiety, than such as those of which I have

* See *per* Tindal, C. J., 10 Bing. 505.

been speaking, where negligence or misconduct is imputed to our professional brethren, in your walk of the profession. For the mere imputation of it, whether justly or unjustly, is attended in either case with vexation and alarm, and in the former, also, with serious danger, sacrifice, and suffering. It is very distressing to see, for instance, such a case as I know to be at this moment pending—that of an honorable and able practitioner, guilty of some real negligence or indiscretion in the conduct of a cause, perhaps in the pressure of business, or through undue reliance on inefficient subordinates: and which is pounced upon by—it may be—a mean, ungrateful, vindictive client, as a pretext for refusing to pay his attorney's bill; and not only that, but as a ground for instituting proceedings, either by action or summary application to the court against him, and in which that client unfortunately must succeed; for the judges are of course bound to administer justice, according to law; and counsel retained against you must, however reluctantly, also discharge *their* duty before the court and jury, and in advising on the case submitted to them.

I could cite many instances from the Reports, in which attorneys have suffered terribly from the effects of deficient vigilance and knowledge; having been called upon to make good to their clients many thousands of pounds lost through what the law calls *crassa negligentia*, for breaches of the rule as laid down above, by Lord Chief Justice Tindal. I will mention only two which happen now to occur to me: an old one in 1767, and a modern one in 1837. In *Russell* v. *Palmer*, 2 Wilson, 325, an attorney

omitted to charge a defendant in execution, within the time prescribed by a rule of court, in consequence of which he was discharged by Supersedeas. Though it was strongly urged that the rule of court was expressed in such doubtful terms as to take the case out of the category of *crassa negligentia*,* the jury were directed to find negligence, and returned a verdict against the attorney, under Lord Camden's direction, for *three thousand pounds* damages! The case, however, was tried a second time, when the jury thought proper to give a verdict for £500 damages only, though they had been directed that "they were at liberty to find what damages they pleased;" and they might again have found a verdict for £3000, the amount of the debt lost, had they chosen! The other case (*Donaldson* v. *Haldane*, 7 Clark & Finelly, 162) is that of a Scottish practitioner; and I invite your attention specially to one feature in it—that the defendant had volunteered his services, in a friendly spirit, and acted gratuitously, on behalf of the lender of money on mortgage Nevertheless he was held liable for the consequences of negligence, in taking an insufficient security, and the House of Lords, on appeal, affirmed the decree of the Lord Ordinary, which had been confirmed by the Court of Session, ordering the defendant to make good the sum of £2000! It was admitted by Lord Brougham, in giving his judgment, that "the defendant's not having made any charge, and his

* The evidence did not bear out this line of defense—it appearing that the defendant had been really guilty of negligence; having been reminded by his own clerk, of the necessity of charging the defendant in execution.

conduct in volunteering his services, inclined the House to consider that the liability he incurred in point of law was somewhat hard upon him; but still," continued his lordship, "I can not doubt that he is liable;" and Lord Cottenham, C., had concurred in that opinion. Is not this, gentlemen, a very startling case? A short time ago a member of the bar had to advise on a similar one, in which his client had also acted gratuitously, and in a most generous and honorable spirit toward his client. We can not, however, make the rigid rules of law yield to such considerations; and the gentleman alluded to gave an opinion in conformity with the rule laid down in the highest court in the land, in the case above mentioned, of *Donaldson* v. *Haldane*. I have heard of a case which happened about ten years ago, in which a young practitioner, having made a slip similar to those already specified, was called on to pay so large a sum of money to his client, after vainly incurring heavy costs to resist his claim, as completely exhausted that unfortunate practitioner's limited resources; and he was compelled, almost broken-hearted, to give up practice, and take a situation as clerk in an office; and great difficulty he experienced in even so far mitigating his misfortune, owing to the natural hesitation of those to whom he applied for employment, about engaging one who had so committed himself!

You well know that counsel make, on such occasions as I have been alluding to, the most desperate, but sometimes unavailing exertions on behalf of such a persecuted and harassed client, and when unsuccessful, their mortification and regret fall little short

of your own. I have seen several painful and truly disgusting instances, in which an attorney's long-continued anxiety, exertion, and expenditure on behalf of his client, have all gone for nothing, through the former's having unfortunately committed some slip, enabling that client to trip up the heels of his attorney—to play upon his fears of the consequences of exposure, and plunder him on the same pretext; his efforts being eagerly seconded by some of the more disreputable of your brethren!

Now, from all this, gentlemen, deduce two practical inferences. First—Keep in view such a contingency, in every case in which you are concerned, as a sharp incentive to vigilance. To be forewarned, is to be fore-armed; and though you often experience noble and generous conduct on the part of clients, you also have not unfrequently to encounter the cruellest ingratitude. An old and eminent Scotch physician* once said to me, "Ah, my dear friend, when people are ill, they call us in like angels; and when they're well, they kick us out like devils;" and so it is, too often, with you and your clients. At sight of your *bill*, all recollection of your *services* vanishes!

How are you then to fore-arm yourselves? I repeat, by vigilant circumspection; by rigid conscientiousness; by acquiring an exact knowledge of your profession; by omitting no reasonable precaution against such a contingency as that of which I am speaking. And one of those precautions should be, keeping an eye, *as you go on*, to the securing

* The late Dr. James Hamilton, who was then upward of ninety years old.

evidence of the propriety of the steps you may be taking, in important cases, or on behalf of a client whose character and disposition you may have reason to distrust. This will be the more necessary, if you have any reason to apprehend an *adverse issue* of proceedings in which he has engaged you, and which adverse issue he may wrongfully impute to you, even though your exertions have been really masterly, and your whole conduct unimpeachable. Secondly—When you are yourselves required to conduct proceedings of this kind against your brethren, remember that you *are* brethren; and while doing justice to your client's interests, firmly and conscientiously, deal very considerately with an erring brother, and sincerely strive to shelter him from the malice of your own vindictive client. Don't take advantage of petty slips made by your opponent—demurring specially, snapping judgments, or setting aside proceedings, for mere formal irregularities. I recollect, for instance, a case where a client of mine had his declaration on a bill of exchange demurred to, because, instead of the words "in the year of our Lord 1834," he had written, "A.D. 1834." I attended the late Mr. Justice Littledale, at chambers, to endeavor to get the demurrer set aside as frivolous, or leave to amend on payment of a shilling; but that punctilious, though very able and learned, judge, refused to do either. "Your client, sir," said he, "has committed a blunder, sir, which can be set right only on the usual terms, sir. 'A.D.,' sir, is neither English nor Latin, sir. It may mean any thing, or nothing, sir. It is plain, sir, that here is a material and traversable fact, and no date to it, sir;" and so

forth:" whereupon he dismissed our poor summons, with costs! That demurrer had been spun out by a pleader, to an inconceivable length, in ringing the changes on that one objection, and my client had positively to pay out of his own pocket, between seven and eight pounds. Now, was not that a dirty, a detestable piece of pettifogging? Will any of *you* ever descend to such conduct? And take care, in your turn, not to expose *yourselves* to these attacks. This "A.D.," which I have mentioned, happened to have been left standing, because the clerk who drew the declaration had been, observe, "in a *hurry;*" which same *hurry* cost his master between seven and eight pounds!

In last Trinity Term (1847), the Court of Exchequer was called upon to deal with a similar slip. The plaintiff had forgotten to add the letters "i s" to the letter "h" in the printed form of a count for "work and materials provided for the defendant at h ," not his, "request;" on which the astute defendant demurred! The demurrer was argued, and he positively got judgment!* Now, gentlemen, what say you to such cases as these? If parties will raise such questions, the court must, of course, decide them, and according to law. But I really think it high time that the courts *in Banco*, and judges at chambers, should be armed with summary powers of dealing with such wretched abuses of the technicalities of law. In the mean time, however, need I ask you, any one of liberal and honorable feeling, *is* the taking of such objections, except in extreme cases of unconscientious, fraudulent, and

* Birdoe *v.* Spittle, 1 Exchcq. Rep. 175.

oppressive demands set up against your client, likely to make the law respected, or despised; lovely, or hateful? You know as well as I do, that it is calculated to embitter professional intercourse; to make practitioners despise and detest each other; to cast scorn and contempt on the very name of gentleman, as assumed by persons capable of acting thus; to expose the profession to public ridicule and hatred; and libel the administration of justice. I say, throw scorn and contempt on their assumption of the name of "gentlemen;" for *could* gentlemen act thus, treat each other thus, thus trick and snap at each other, in their private transactions and intercourse as men of the world, as members, and educated members of society? Does the question bear asking? Is conduct such as this consistent with the OATH which has been taken by those who resort to such practices? Is this "truly and honestly demeaning themselves in the practice of an attorney and solicitor, to the best of their knowledge and ability?" What! thus to defeat justice? to prick and pierce her? to scandalize, to pillory the law? to wrong and plunder your opponent, or your own, or opponent's, client? I know you are proudly echoing my indignant questions; desiring to be gentlemen, from the beginning to the end of the chapter; every where, on all occasions; in short, gentlemen, not in name, in word only, but in deed and in truth; who can not conceive the idea of doing such things as these; who will not encourage or tolerate them on any account whatever; but, on the contrary, do every thing to discourage, scout, and expose those who are guilty of such conduct.

Surely thoughts such as these are proper to be

dwelt upon by you, on arriving at the critical point to which you have been brought; that, as I said before, at which you assume your honorable responsibilities as practitioners of the law. As you can not become "lawyers in haste," however, so you can not assume, in a moment, the manners, and feelings, and character of gentlemen. These are as much the subjects of culture as the understanding, but suffer more seriously by the want of culture. In neither case, however, are the effects of negligence irreparable, but impose the necessity of severe exertion to remedy them; and, in a word, I would say to one arrived at this point of his career, and aware of the existence of some ground for self-reproach on this subject, *now* is the time to correct, with firm determination, the mischievous and degrading tendency; "Awake, arise, or be forever fallen."

And let me also just whisper to you, in conclusion, do not be too eager, impatient, and ambitious, on arriving at this said starting point; but on the contrary, strive to form a calm, a sober, and modest estimate of yourself and your pretensions, of your position and your prospects. Do not entertain extravagant expectations of success: if you do, the presumption is immensely strong that you will be disappointed, and that bitterly. He who will walk on tip-toe must soon be fatigued and exhausted, and the sooner, the greater his efforts. The strain and tension are unnatural; they can not possibly be sustained. Remember that *confidence*, from which alone springs professional employment, is a plant of slow growth, which must be very tenderly and patiently watched and nourished. The soil from

which it springs must be rich and productive—being the perception, by others, of your purity and elevation of character, your modest, manly sedateness of habits and demeanor, your thorough knowledge of business, your incorruptible integrity : in short, your possession of those qualifications which it is the object of these lectures to urge upon you. Think not that this is the work of a moment. *Forcing* here will not do. The gourd that came up in a day, withered in a day. It is really a difficult thing to establish a connection ; and you will probably, many of you, find it so, especially in these days of intense competition, when you will see, whichever way you turn your eyes, wherever you go, rivals swarming around you, all as eager as you ; and possibly some abler, but many also far less scrupulous. I say this, not to damp your glowing hopes and energies, but only to guide them. If you resolve on commencing practice at once, on your own account and alone, it is to be hoped that you and your friends have given the matter due consideration, with reference to your prospect of securing a really available connection, and your means of holding out—of maintaining the arduous struggle, till your profession begins to repay your exertions and sacrifices. But let me venture to offer a friendly admonition, that you pitch not your note too high at starting : assume not too great pretensions, nor commence operations on a scale too showy or extensive for your means. If you do, you may consider yourself guilty of a sort of slow suicide ; you will be, as it were, literally tying a millstone round your neck, which will in time bow down your head, however high you may have held it.

weigh upon your spirits, blight your heart, and perhaps at length drive you desperate; impair your feelings of conscientiousness and rectitude, and disable you from resisting temptation. *Then*, who shall tell where you will end, with what fearful rapidity you may continue to descend the inclined plane, till you plunge into darkness—into misery, disgrace, and ruin irretrievable?

LECTURE IV.

GENTLEMEN:

IN appearing before you for the last time, I feel a sense of oppression, from the consciousness of so much remaining to be said, on the important and extensive subject under consideration, which can not, nevertheless, be said to-night. The materials which I had prepared for this lecture, were really sufficient for four! What was I to do? Remembering that I intended, from the first, to commit these lectures to the press, I determined to touch, lightly, only the more prominent topics, and offer for your acceptance this evening, little else than a series of hints and suggestions, but on matters of considerable delicacy and importance: such as a spirit of faithfulness would not permit me to pass by. I feel highly gratified by the manifest attention with which you have hitherto heard me: and if this, my last draft on your indulgence, be honored, I shall hereafter reflect on my appearance here with lively satisfaction, and regard myself as abundantly recompensed for the efforts, which I have made to afford you what might be deemed both interesting, and useful. And, first, let me congratulate a considerable number of you on the result of last Tuesday's examination, which I have learned from the authorities, was most satisfactory.* Some few of you, however,

* Only nine were rejected out of ninety-eight who had presented themselves for examination. *Ante*, p. 112 (n.).

were, I regretted to hear, unsuccessful; and if those so unfortunately situated, be present to-night, let me entreat them not to be disheartened; but "out of this nettle danger to pluck the flower *safety*"—so that this first reverse, may prevent a life of reverses.

Though the articled clerk is now supposed to have passed into the practitioner, I must take it for granted that he feels the necessity of continuing to deserve the character of *student;* deeply convinced that, as I endeavored the other night to explain,* he is under a strong moral obligation to do so—to avail himself of the opportunity which his leisure will, doubtless, for some time afford him, in some respects fortunately, in others he may consider unfortunately, for methodizing, deepening, and extending his professional acquirements, and perfecting his qualifications. Gentlemen, if you have a single spark of true ambition in your composition—of that ambition which prompts you worthily to fulfill the mission on which every man is sent into the world by the awful Author of our being—that mission which, in your case, is one of signal difficulty, involving special responsibilities and opportunities; if you are made of stuff which that spark can kindle, so that it shall burn steadily and brightly, you will, at this eventful period of your career, act with cheerful and hearty resolution on the suggestion which I am offering. Consider the exigencies which may almost immediately beset you, a topic to which I have already several times adverted; the OPPORTUNITIES which may present themselves, far sooner than you had looked for, but which must find you ready and able

* *Ante*, p. 112, *et seq.*

to seize them; for if you be not, they will flit past you to those who *are*, gladdening *them*, but leaving you mortified and disheartened, and enduring the whippings of severe self-reproach. I will give you one of several instances, which have come under my notice, illustrating the truth of this remark. Some years ago a young practitioner was suddenly offered, by a powerful client, whom his father had obliged, a certain situation of considerable emolument, not only compatible with, but productive of, private practice. He was, however, at the same time, seriously asked to consider whether he felt competent for the post; on which he consulted several persons, and among others, myself. My heart smote me as he told me, with glistening eyes, the offer which he had had, and asked me whether I thought he was fit for the office. I knew he was not; and, on his pressing for my honest opinion, I gave it to him. I think I hear him sigh, I think I see his saddened features, at this moment. The other gentleman whom he consulted, expressed a similar opinion: his own father reluctantly admitted the correctness of that opinion, and his son was forced, alas! to decline the tempting offer which had been made to him. He was a very amiable young man, not without talent; but I am sure he had never given his heart to that jealous mistress, the law; and see how she treated her fickle suitor!

But, he was an admirable dancer, the life of every party he figured at: most gallant and assiduous in attendance on pretty lady-sightseers, might be found every where, but at his office, which was dull and dreary enough for one habituated to "the halls

of dazzling light," "the gay and festive scenes," which have bewildered and incapacitated so many for the sober business of life! The situation alluded to, I afterwards heard, was obtained by a young man, then managing clerk to an eminent firm in London, whom he had faithfully served for many years, having risen from a very humble station. He had even been an errand-boy in the office, to which he had gone from a charity school, where he had accidentally attracted the notice of one of the partners, whom he afterward served under articles. I have reason to believe that, within five or six years after his getting this situation, soon after which he also commenced private practice, the latter alone brought him in a clear income of £700 a year; and I am not quite sure—I can, for obvious reasons, say no more—that I have not had the honor of numbering him among my auditors in this hall. He was, you observe, a managing clerk: and note the *opportunity* thrown in his way! He had been compelled, by lack of funds, to occupy that position: but from what I have seen in the profession, if I were in your walk of it, and at your time of life, even though I had two or three thousand pounds at my command, I should consider that I acted wisely in becoming, if I could obtain the situation, a salaried or managing clerk in some respectable office, and continuing there for two or three years, that I might be in the way of honorably availing myself of advantageous opportunities; improving my professional knowledge; acquiring superior business habits; and familiarizing myself, betimes, with the sense of *responsibility*.

If, however, you think proper to start in business for yourself at once, you will do it, either alone or in partnership. Let me begin with the former case. Unless you be exceedingly fortunate, and have rare advantages from fortune and *connection*, which latter is a thing too often of brilliant promise at a distance, but rapidly melting into thin air, or the mist of disappointment, as you try to approach it, you will have two or three years' comparative solitude, which will invite, or perhaps I should say compel, you to turn it to good account, by sedulous study, by systematic reading; by embracing every opportunity to assist your busier brethren, when asked to do so, at once obliging them, and improving yourself; keeping your faculties from rusting, and your knowledge fresh and stirring. You must also be in very frequent, if not even regular, attendance on the courts of law and equity; where the judges and the bar become your tutors—gratuitously, and without knowing it! These are fountains from which you may drink unseen, unknown—refreshing and strengthening draughts! Where you may profit by the experience *of others*, be warned by witnessing the evil consequences of the inattention, haste, incompetency, or misconduct *of others*. To return, however, to reading. Bear in mind the great extent of the field on which you have entered. You are to be ready for all comers, and to receive them at a moment's notice. Now I would suggest to you to take immediate steps to get this whole province, extensive and intricate as it is, at once under your eye. Map it out before you, so to speak: regard the law—law and equity—law, civil, criminal, and ecclesiastical—as only one entire system,

for the administration of justice; not three distinct systems, but one and indivisible, as it is, to the scientific practitioner; who, in your walk of the profession, particularly, has incessantly to do with all these departments—with every portion of the system. By way of making a beginning, let me direct your attention to "The Analytical Table of Rights, Injuries, and Remedies," prefixed to the first volume of the late Mr. Chitty's "General Practice of the Law." It occupies only twenty-six pages. It is really an excellent idea, and well adapted to serve as a model, or basis, of your operations. It will also prove very useful for practical purposes; enabling you to dispose conveniently of your legal acquisitions, and to run your eye over them, every now and then, so as to be familiar with them, and also to note, from time to time, without much trouble, the alterations effected by statutes or decisions. There are four columns, headed "*Subject matter*" [as "The Person"], *Rights* [as "Personal Security"], *Injuries and Offences* [as "Homicide"], *Remedies and Punishments* [as "Prevention," "Self-Defense," "Punishment"]. A glance at this table will show you its capabilities for your purpose; but do not rely on its details; for the law has been greatly altered during the fourteen years which have elapsed since that table was framed. If you will take the trouble to do something of this kind, it will enable you, in sudden emergencies, when a client comes to consult you, as soon as you shall have *calmly* heard him, to refer the facts of his case, pretty readily, to their proper legal category, and tell him generally whether

he *has* the right which he supposes—whether it has been really infringed, as he alleges; and if so, in what department—civil, criminal, or ecclesiastical —of the legal fabric, he ought to seek redress. The possession of some such map, or plan, or chart as this, will give you a certain sense of security, which will inspire you with self-possession and confidence, and contribute also toward preserving the scientific character of your knowledge, and impressing that scientific character upon your practice. With a view to this last point—the scientific character of your acquisitions—I would, in passing, point out two works well worthy of occupying a place on the shelves of a young practitioner of superior capacity and pretensions—the admirable "Leading Cases" of the late Mr. John William Smith, of which a new edition, carefully edited, with additional notes, by my friends, Messrs. Keating and Willes, is nearly ready; and Mr. Herbert Broom's "Selections of Legal Maxims, Classified and Illustrated," of which a second edition has just been published. It is a work of great merit, and well adapted to direct the student's eye, steadily, to the great *principles* on which the law is founded, as exhibited in the practical working of its details.

I advise you at this stage of your career to bestow special pains on acquiring a knowledge of those heads of law which are apt to be suddenly called into action —on occasions where prompt decision is indispensable, and you can not refer to the assistance, written or oral, of others; I mean, for instance, wills, the law of stoppage in transitu, lien, distresses, breaches of the peace, &c.

Whenever important new Acts of Parliament make their appearance, instantly take an opportunity of studying their provisions; for you do not know how soon you may be required to advise a client who is affected by, or seeks to take advantage of them.

If you should obtain an articled clerk at an early period of your career, pray bear in mind that you thereby incur a grave responsibility. You are charged with the duty of teaching him his profession; and you must not shrink from the task. If you have not sufficient business in your office to occupy his attention fully, you should seek to compensate for the deficiency by oral instruction: by personally directing his studies, and, from time to time, ascertaining his progress. To this subject I have already alluded in a former lecture.* Remember the examination which he must undergo on quitting you, and for which you are bound to prepare him, that he may pass it with credit to both himself and you. I recommend you to procure a copy of Mr. Maugham's "Digest of the Examination Questions," which have been proposed here, from the commencement of the new system, in Trinity Term, 1836. Since that period, nearly three thousand questions† have been propounded as tests for ascertaining "the fitness and capacity" required by the legislature, of persons seeking for admission. These questions have been, from time to time, carefully framed, by gentlemen of great practical experience, and wear the stamp, as I may say, of official sanction. The idea of digesting them, in

* *Ante*, p. 110, *et seq.* † Preface, p x.

their present shape, was a happy one; and Mr. Maugham has executed his task with much judgment. I have carefully examined the third edition, which has just (1848) been published, and beg to express a strong opinion in favor of this modest but valuable little performance. Those questions which have become obsolete in consequence of new statutes, rules of court, and decisions, have been omitted; and those which have been retained have been carefully classified, and arranged in such an order as is likely to facilitate the labors of the student. It is by no means an easy matter to frame *good* "Questions." It requires no little tact and experience. Here excellent questions are prepared for you, ready to your hand, and will greatly assist you in teaching your pupil, at once keeping alive your own knowledge, and familiarizing him, long beforehand, with the kind of work which will be required of him, when he comes to take his seat, in this Hall, before the examiners. I conceive that the rejection, here, of a clerk, must be a severe mortification to his master, and a very stinging mortification, if he be conscious that his own neglect has contributed to that rejection.

I spoke the other evening of the various public situations which you are called upon to occupy. I shall now revert for a moment to one of them—that of coroner, because it is one in which you may have *lay* competitors, especially medical men. I have often considered which were better calculated for this office, you, or medical men; and have no doubt whatever that *you* are; that the interests of justice are likely to be effectually promoted by one trained

from his youth to habits of legal investigation; who may reasonably be supposed capable of preserving a calm, impartial mood of mind; of suspending his judgment, and checking the disturbing approach of passion and prejudice. It is far easier for such persons to acquire a competent amount of that sort of knowledge which is called forensic medicine, or medical jurisprudence, than it is for a layman, be he a medical man or not, to acquire the requisite legal knowledge, to clothe himself at once with legal habits, and exhibit a judicial temper and capacity. But take care to secure this your vantage-ground, by an early attention to the leading rules of evidence, and of criminal law. You may then laugh at your lay rivals; but otherwise a clever layman may prove a serious competitor.

Again: Pray attend early to that branch of our public law which regulates municipal corporations, and the Constitution of Parliament, particularly the elective franchise. Questions are perpetually arising concerning these—questions often of difficulty, and exciting much local, as well as general and public interest: occasions affording you signal opportunities for making a creditable appearance, and acquiring influence. You ought to be familiarly acquainted with the *Municipal Corporation Act*, passed in 1835 (stat. 5 & 6 Will. IV., c. 76), and the statutes by which it has been frequently modified,* and to keep your eye on the decisions pronounced by the courts from time to time, on the construction of the

* Stat. 6 & 7 Will. IV., c. 103; 7 Will. IV. & 1 Vict., c 78; 5 & 6 Vict., c. 104; 6 & 7 Vict., c. 89; 8 & 9 Vict., c. 110.

provisions of these important statutes. So also, with the statute popularly known as "the Reform Bill, passed in 1832 (stat. 2 Will. IV., c. 45), and that in 1843 (stat. 6 & 7 Vict., c. 18), by which latter great changes were effected in the former statute, and the Court of Common Pleas constituted the tribunal for appeals from the decisions of the revising barristers. The judgments of the court, on the questions which have been brought before them, since the Act above referred to was passed, will be found in the seventh volume of *Manning and Granger's* Reports, and the second and fourth volumes of the *Common Bench* Reports.

Surely, again, you ought not to shut your eyes against the law administered in the foreign possessions of this great and immensely extended empire. Whenever one looks at the little space which this kingdom occupies on the map, and thinks of its stupendous possessions in every quarter of the globe, it may suggest the idea of a comet—its slight nucleus, and enormous tail sweeping the heavens! Well, gentlemen, forgiving me this momentary flight of fancy, let me advise you to acquire some general knowledge, at least, of our colonial law; for questions arising out of its action on our fellow-countrymen abroad, are constantly occurring, and affect the interests of persons here at home. Appeals, also, come from all parts of the world, to the House of Lords and Privy Council, and it is you who are concerned in shaping these matters for argument and adjudication.

But almost above all, gentlemen, it behoves you —all of us lawyers—to acquire a sound and thor-

ough knowledge of constitutional law: a matter this, surely, in these critical and confounding times, of prodigiously increased importance to all of us, to all intelligent persons, but most especially, I repeat it, to us lawyers: for if we lawyers can not find our way readily about the fabric of the Constitution, grand and glorious, and venerable as it is, but in many portions somewhat dusky and intricate, who shall? We, however, are bound to know, nay, we profess to know, all about it; we have pledged ourselves to become acquainted with it: we live and move in it. To change the figure, we direct the practical working of the state machine. Gentlemen, if troubled times be coming upon us—*quod Deus avertat*—let us be found at our posts, up and doing, as have been our ancestors, in all times past: setting a good example, by our dauntless spirit, and true, intelligent love of our institutions: with which we should be ready to stand or fall; if they perish, we shall perish with them. They are worthy of the severe study which they require. That study let us give them; for it alone will qualify us to "do the state some service;" to uphold our invaluable Constitution, in its essential integrity, whenever it is menaced; to correct misapprehensions; to dispel and expose misrepresentations; to distinguish steadily between reform and revolution; between reparation and disorganization.

Gentlemen, we lawyers have great political influence: no one can deprive us of it; but what is the true source of our power? Knowledge; our legal and political knowledge; practical, familiar knowledge, guided by virtue, loyalty, and patriotism: a

knowledge leading us to eschew speculative political changes, and pestilent trifling with our complicated and time-honored institutions. While I say that we ought ever to be in the first ranks of those who would remedy distinctly-proved abuses, those which appear such, after the diligent scrutiny of practically experienced and competent observers, I would yet say, "Meddle not with them that are *given* to change;" let us throw, rather, our weight into the opposite scale; let the presumption be in favor of existing institutions: and let us require that presumption to be rebutted by indisputable and irresistible evidence. Those who act otherwise are curses to their country, doing incalculably more mischief than they themselves, or people generally, are aware of. I say all this with, on the one hand, a lively appreciation of many salutary and admirable changes and improvements recently effected in our laws, public and private: and on the other, with a strong conviction that there have recently been changes which were not improvements, but rash and mischievous innovations.

To hasten on, however, gentlemen. If you have it not already, do not fail to possess yourselves soon of one work, which I can not mention without expressing respect for its distinguished author. I mean Mr. Hallam's "Constitutional History of England." It is now published in two volumes; as is also his other work on the Middle Ages; in which is contained the early portion of the Constitutional History. Gentlemen, we lawyers are proud to number this distinguished writer among us, for he is one of us, a lawyer, and his name sheds luster on my branch

of the profession, as the name of another eminent historian, Mr. Sharon Turner, illuminates yours; for that learned and accomplished person was a practicing attorney and solicitor to the day of his death, and you ought to be very proud of him: as I assure you are we, your brother lawyers. And now that I am on this subject, let me add, that that great prelate, Bishop Warburton, a consummate scholar, a profound divine, and transcendent controversialist, was once in your ranks, and actually served out his five years' clerkship: when his love of theological studies impelled him to quit the attorney's office for the Church. Why do I speak in this tone? To implore you not to depress yourselves into drudges, not to libel both law and letters, by saying that they can not live together, that they are incompatible pursuits. It is not true, gentlemen; for I know many living contradictions to such an assertion, in eminent members of your branch of the profession; and to my certain personal knowledge, most, if not all, the profoundest lawyers living, beginning with Lord Lyndhurst, and going down to the latest accession to the judicial bench, are also distinguished by their general scholarship, scholarship ripe and sound, literature varied and elegant, and the highest philosophical acquirements. My late gifted friend, and the most distinguished of your lecturers, Mr. John William Smith, at the same time that he was a most learned, able, industrious, and successful lawyer, was a man of wonderful classical and general acquirements and accomplishments, as was known to all of us his surviving friends. Away, therefore, with so illiberal and vulgar a calumny, as that the man of

law can not also be a man of letters. You, we, are all estopped from making such an allegation, by the examples which I have cited, and which I could greatly multiply. 'Tis a calumny spread about by plodding dullards and envious, sneering incapables, and which, were it to obtain general credence, would attract public contempt toward the whole of our profession. I, for one, will not remain silent under such an imputation; and I ask you to look at the ranks of my brethren, numbering nearly four thousand. Were you to be thoroughly acquainted with them, you would assuredly find that many of the most learned lawyers are also most accomplished scholars; and do they discharge their duties the worse for that? You know better; and that I could readily mention names which would offer the assertion a splendid refutation. But, to descend to far lower ground, your own interests, even, your direct professional interests, are likely to suffer materially, if you give into and act upon this injurious, degrading, and most fallacious notion. As I endeavored to show you, on a former occasion,* you must keep pace with an advancing age—the age which you seek to represent, in advising and upholding the interests of its individual members; interests often consonant with, dependent upon, and consisting of, literature and science; matters occasioning litigation, and that, too, the most interesting, arduous, and lucrative. Imagine a scholar, a philosopher, coming to put his important professional interests into the hand of a driveler who can not understand a word he says; can not enter into his feelings and

* *Ante*, pp. 54, *et seq.*

anxieties: nor appreciate the nature of the interests affected, or the injury which he has sustained, and is consequently unable properly to instruct those who are to advocate and protect such interests in court.

Let me next, however, suppose that you enter into partnership. Ah, gentlemen, what a step is that! and how often taken by those who do not, who *will* not give it the consideration which it so imperatively demands! Listen to two pregnant passages occurring in judgments of that great lawyer Lord Chancellor Eldon, speaking with profound sagacity, illuminated by vast experience! "When *partners* differ, as they sometimes do when they enter another kind of partnership, that of man and wife, they should recollect that they enter into that partnership 'for better, and for worse;' and this court has no jurisdiction to separate them, because one is more sullen, or less good-tempered than the other. Another court, in that other partnership to which I have alluded, can not—neither can this court, in *this* kind of partnership—interfere for their relief, unless there be a cause of separation which, in the one case, must amount to downright 'cruelty,' and in the other, to an entire exclusion of the partner from his interest in the partnership." And again: "If men will enter into a partnership, as into a marriage, for better and for worse, they must abide by it; but if they enter into it without saying how long it shall endure,* they are understood to take that course, in the expectation that circumstan-

* It is perhaps hardly necessary to intimate to younger readers, that where no limit is originally fixed for the duration of a partnership, it is called a partnership *at will*, and may be

ces may arise in which dissolution may be the only means of saving them from ruin." It is worth your while to refer to the cases from which this is taken —*Goodman* v. *Whitcomb*, 1 Jac. and Walker, 592, and *Crawshay* v. *Maule*, 1 Swanst. 509. In another case, Lord Eldon said: "He who enters a partnership should consider that he commits his best and dearest interests to the tender mercies of a stranger!" How many have had heart-aching experience of the truth of these remarks; who may be now wise, but have not been wise in time; who became partners "in haste," and are "repenting at leisure!" These and similar reflections apply with tenfold force to partnerships between attorneys and solicitors, from the nature of the transactions in which they are concerned; of the relations in which they stand, not only toward each other, but their clients, whose interests are in the hands of such partners; interests often of the most important and delicate description, and which may be deranged and fatally compromised by disputes, misunderstandings, and estrangement, or even the want of a *cordial* understanding and entire confidence between them; or by the incompetency, or want of honor and integrity, of any or either of them. For your partnerships, a thorough good understanding between partners, confidence in one another's integrity, honor, ability, and

dissolved at the individual pleasure of either, or any, of the partners, and at even a moment's notice. See *Nerot* v. *Burnand*, 4 Russell, 260; *Peacock* v. *Peacock*, 16 Vesey, 50; *Featherstonehaugh* v. *Fenwick*, 17 Ves. 298; and *Heath* v. *Evans*, 4 Barn. and Ald. 175 (*per* Parke, J.) Hence the force of Lord Eldon's observation.

acquirements, a harmony of tastes, dispositions, and characters, are peculiarly necessary to prevent indescribable wretchedness to yourselves, and most serious injury to your clients. What caution, what thorough and extensive inquiry and consideration are requisite, *before* you enter into this union of your fates and fortunes! How much easier to avoid getting into an improvident, imprudent, and dangerous partnership, than to escape from it, when once you have got into it! What scenes of deadly animosity, incessant bickerings, often with mortifying and painful publicity given to them, might be avoided by timely reflection, which might have availed to enable you to resist an apparently advantageous, a most tempting offer, instead of accepting it in a hurry! The tripartite division of professional duty, common law, equity, and conveyancing, however, renders your partnerships a matter of infinite convenience, if not even almost of necessity; but, take care! take care! And one practical caution remains. In the case of a young man being introduced into a firm, or entering into partnership with another person, let both parties consider well whether the incomer be personally equal, in respect of *professional qualification*, to the discharge of the duties which will devolve upon him. If he prove to be not so equal, he may soon ruin his partners, and their clients too; for they have a right to assume that their old advisers had ascertained the competency of the new-comer. Whoever goes incompetent, or sends an incompetent person, or knowingly or negligently receives an incompetent person into partnership, is guilty of a gross dereliction of *moral* duty.

Having thus launched you into practice, let me enter upon the concluding section of my duties, by offering to your consideration, without any particular regard to method, a few practical hints, embodying some of the results of my own personal observation and experience. I can not flatter myself that they will be of any service to your seniors, to the elder members of your branch of the profession; but I trust, at the same time, that they will hear nothing inconsistent with their own experience, or unfit to be pressed upon the attention of their juniors. And I may say, at starting, with Horace,

> —— Si quid novisti rectius istis,
> Candidus imperti. Si non, his utere mecum.

The unthinking part of the public conceive that you are altogether, or principally, concerned in, and taken up with, LITIGATION: but you and I know better; that, on the contrary, it is your duty, and ought ever to be your object, to *prevent* litigation. Were it otherwise, did you deem yourselves at liberty to stir up strife, only imagine what a fearful spectacle, what a conflagration, society would exhibit!

I am strongly tempted to give you two cases in point here, one of which came under my notice professionally, the other happened to myself personally. Some years ago, a neat little school was erected by a few charitable individuals, under the superintendence of an experienced surveyor. The building, inclusive of the ground on which it stood, cost about £1400. Adjoining, on each side, were some small tenements, behind which ran a long open ditch,

into which they drained, and all of them belonged to one individual. Along the back of the school, and in the course of the ditch, was constructed, with great care, a large barrel-drain; repeated application being made to the owner of the adjoining premises, to know whether what was done, was satisfactory to him as such adjoining proprietor. He maintained an ominous silence, till about six months after the erection had been completed; when actions were brought against the trustees of the school, for an alleged obstruction to the drainage of the adjoining houses, and to the issuing of the smoke from the chimney of a small washhouse adjoining the school wall. To prevent litigation, a small sum was offered to the plaintiff, without prejudice, and under protest that no injury whatever had been done to his property. His attorney, however, rejected the offer, insisting on a sum so preposterous in amount, that the defendants resolved to resist the actions. The causes came on for trial in due course. Two gentlemen, one now on the bench, the other in the House of Lords, led for the respective parties, with a formidable array of witnesses, models, and plans. The causes were referred to arbitration. After many meetings, and the examination of a host of witnesses, among whom were six of the most eminent surveyors in the metropolis, the arbitrator awarded in favor of the defendants on all the issues; but the plaintiff succeeded in setting aside the award, for a technical defect. On this the causes came on again for trial; were again referred, but to a different arbitrator; and after a still more protracted reference, the arbitrator again decided in

favor of the defendants, giving them all the costs, which were swollen to an appalling amount. By this time, however, the plaintiff, in his turn, begged for mercy, lamenting that he had ever been induced to embark in such an extensive litigation. He and his attorney soon afterward got, as the phrase is, to loggerheads; I believe each sued the other; both had reason to regret the issue; and as for the defendants, I forget whether they succeeded in recovering their costs from the plaintiff. There was really no pretense for bringing the actions; and even had there been, the sum offered by way of purchasing peace, was abundantly sufficient to have obviated any conceivable injury or inconvenience to the plaintiff; but he preferred to take his chance of eighteen months' harassing and expensive litigation; and see the result. And what intolerable injustice and cruelty toward the defendants! A few months previously, I was not a little annoyed by finding that a leaden gutter, running along the roof of the stables, which were at the back of our little garden, having given way, let the water run down into the aforesaid garden. In rainy weather this caused a nuisance which I resolved to get rid of; so I wrote to the owner of the stables, a gentleman of fortune, who took no notice of three letters, which led to a fourth, in pretty strong terms. This elicited a very offensive answer, which I had in my hands, when a client of mine came to my chambers. That client was your present president; and into his confiding breast I poured my sorrows. I insisted on his instantly issuing a writ, in an action on the case, "to bring my gentleman to his senses." "Pho! pho!" said my friend, "I'll

set it right for you." "But I'll not be insulted with impunity." "I'll take care that you are not," quoth he, but with a smile which I did not like. "Upon my word," said I, "I believe you are going to repair that gutter yourself." "No, no," he replied; "I will really take care that the matter is settled satisfactorily, both to your feelings, and your interests; so you may start for circuit, to-morrow, in peace." The next thing I heard was, that he had got up a "case," for the opinion of my late friend, Mr. John William Smith, who took care to start such a series of ingenious and perplexing doubts as to my right of action, as not a little astonished and irritated me. Under these circumstances, it was said that the thing had better stand over till my return, as it did; but by that time there was a capital new zinc gutter running along the entire length of the stable, and a little packet of letters lying on my table, headed "*In re* the Gutter!" and this consisted of a little correspondence between your president and the highly respectable attorney* of the proposed defendant,† who was a magistrate for the county of Middlesex, but an irritable person. When, however, our two representatives met, they laughed heartily at their respective clients, and said that they would rather put up the gutter at their joint expense, than suffer us to go to law about it. This, however, was not necessary. My friend's opponent represented the matter in its true light to his client: we were, it turned out, both stanch supporters of the same political opinions, and knew several of each

* The late Mr. Dod, of Billiter Square.

† He died a few months afterward.

other's friends: and he not only put up a new gutter, in the very completest style, but wrote me a letter couched in the handsomest terms of courteous apology. When I inquired, some time afterward, what were the costs which I had to pay, your president said, "Pho!" And when I told my friend, Mr. John William Smith, how the gutter business had ended, he laughed (poor soul!) immoderately, and said that he had taken uncommon pains with his "opinion!" Now, gentlemen, suppose my opponent and I had fallen into the hands of such persons as he who figured in the foregoing anecdote! What a god-send each would have seen in that same gutter! What a conduit-pipe for turbid and expensive litigation! I trust, gentlemen, that you will regard these two incidents, as not devoid of interest, but as somewhat apt illustrations of the course of conduct on which I have so earnestly commented in a previous lecture.* What mortification and suffering are inflicted, or averted, by those who disregard or observe such injunctions!

As long as human nature, and the course of things, continue what they are, litigation is inevitable; and litigation, too, which might have been spared, yet with no blame imputable to those through whose intervention it is carried on. It springs, too frequently, out of your client's own obstinacy and unreasonableness, which you continually check and restrain, and are bound to check and restrain, as far as you are able. When, however, you can not do so, you must needs let them fight; but make them fight like gentlemen, for it is by and through *you* that they

* Pages 35, 38, *et seq.*

fight. If you forget yourselves, you at the same time forget them. When you are hurried on by undue eagerness and rivalry, it is they who smart for it; they pay the penalty for your misconduct.

"Quicquid delirant reges—plectuntur Achivi!"

Pray, gentlemen, remember this well! When litigation has become inevitable, be as firm and astute as you can possibly be: but be also courteous, liberal, and conciliating in your demeanor. Fight in good temper, in cool blood; and with the dignity derivable from a consciousness that you are really striving to obtain *justice*, and that by fair and honorable means.

Take care, again, how you commence proceedings which you may sooner or later find that you ought not to have stirred in. Take a comprehensive view of the case. Follow it out into its probable consequences, and incidents, with reference to your means, and those of your client and his remote, as well as proximate interests. Begin nothing of which you have not well considered the end.

An action at law, or suit in equity, may at first sight look very attractive and promising, and your eager client may be egging you on: but have a care, notwithstanding: look before you leap; see, through the vista of excitement, that very client, scowling and unsatisfied, with your bill of costs in his hand, and that, too, after a *defeat!*

Consider whether the case will not inevitably be referred, being of a nature, as I once heard Chief Justice Tindal say, "to refer itself, and run away from a jury." If it be, do not incur the expense of

preparing for, and going to trial. You are sometimes coerced, in my opinion unfairly, into references; but you also sometimes unreasonably resist them. When the moment of pressure comes, consider whether you ought ever to have brought the cause to trial; whether you ought not to have foreseen the result. If it were your opponent's fault, of course you are blameless. Nothing is easier than to issue a writ; but if improvidently issued, it will, by and by, come back to you with an awful tail of vexatious and mortifying consequences! Inquire, in every direction, into facts; see your client himself; ask for, and look at his documents, and consider them well; go to the witnesses, or send for them, and hear *for yourself* whether they can, and will, really say what your client tells you that they can and will;* and if you entertain serious doubts, take an opinion; on a case candidly drawn, not slurring over, or concealing, features which you do not like; and let all this be done before the writ issues. Generally speaking, you ought to have under your eye the expected proofs of the witnesses, before

* Not long ago, on the northern circuit, an action of trespass was tried before Mr. Justice Coleridge, in which a nonsuit ensued almost immediately after the first and only witness had got into the box; for it turned out that he had not witnessed the assault, and that all he knew was from the plaintiff himself, who had told him what had happened! The judge was convulsed with laughter, as also was the whole court—every one, in short, except the plaintiff and his attorney. How *could* this case have been got up? It is evident that the attorney must have contented himself with a hasty inquiry from his client, what was the name of his witness, and what it was that he could prove!

you issue your writ, or declare, or deliver your pleas, and this in almost as exact detail as though the period had arrived for setting such matters forth in your brief, or for an opinion on evidence. I have seen hundreds of cases in which such a prudent procedure would have averted vexatious failures: would have either prevented the action from being brought, or resisted, or secured its being differently, safely, and more advantageously shaped. How mortifying it is to discover your irremediable deficiency of proof, only when you have obtained an opinion on evidence, when the case is ripe for trial, and yet to trial you dare not go! And what account must you give of all this to your client when he quarrels with the useless expenditure disclosed by your bill? Be very careful in drawing particulars of demand and set off. Beware what admissions you make, in so doing; how you give credit for *payments*,* or speak of a "*balance*." You may grievously hamper yourself by inadvertence in these respects. One practical suggestion may be worth bearing in mind: viz., when you are proceeding to recover a banking, or other account, and there have been cross dealings—or there is any doubt or difficulty about the case—content yourself with setting out *only the debit side* of the account, giving no credits, but leaving your opponent to make out his case as best he may. It is true that this will subject you to the costs of a

* While the author was correcting the proof of this sheet, in court, at the assizes, a case which was being tried, terminated in a nonsuit, owing to the plaintiff's having imprudently, and needlessly, given the defendant credit for a certain payment!

plea of payment; but that may be a very insignificant matter, in comparison with the danger which you will have escaped, and the advantages which you will have obtained. You may, for instance, have compelled your opponent to call some witness to support his plea, from whom you can, perhaps, extract valuable evidence in your own favor.

Distinguish accurately between such a payment as is the subject of *set off*, and that which is merely a liquidation of a debt or demand due to the plaintiff. I have often seen miscarriages resulting from confounding these two. The "*money paid*" which affords matter of set off, imports that the defendant has paid money to, or on account of, the plaintiff, in such a way as entitles the defendant to sue him for the recovery of it. Try the matter by this test; put this question to yourself before you determine on pleading a set off: "Can I issue a writ against the plaintiff to recover this item?" If you can not, it is not a matter of set off. Again: remember that the statutes of set off are not compulsory; wherefore you can not give credit, in your particulars, for the account of your opponent's counter claim, so as to oust him from his plea of set off.

Be very cautious how you plead *payment of money into court*, which often operates as a dangerous, if not a fatal, admission against the defendant. This plea is so short and simple, that it is often used without due consideration, and without even asking a question of counsel, as to the propriety of the step; and the consequence is, that the defendant is entirely shut out from the only defense which he had to the action. Thus: he can not afterward object to

the jurisdiction of the court; that a condition precedent has not been performed by the plaintiff; that the action has been brought prematurely: that the plaintiff is not entitled to sue in the capacity which he has assumed; that the Statute of Frauds has not been complied with; that there is no stamp, or a wrong one; that the plaintiff does not produce the attesting witness, &c., &c. Nor, generally, can the defendant afterward move in arrest of judgment, on account of the insufficiency of the declaration. Think of these things, gentlemen, when you are disposed to plead this plea; consider the structure of the declaration; and if, on any of these accounts, you entertain doubts, take the opinion of your pleader, or counsel, or ask him a friendly question on the subject.

You are to observe, however, that the foregoing suggestions are intended to apply principally to the case of a declaration upon a *special* contract. The plea of payment into court, upon the general *indebitatus* form, has now a far less formidable effect than that of which I have been speaking. In this latter case, the plea amounts to an admission, only that the defendant is liable, in respect of some one or more contracts or causes of action stated in the general counts, to the extent of the sum paid into court; and the plaintiff can not apply that admission to any particular contract he may please to select, any more than the defendant can.* Take care, by the way, to pay into court sufficient to cover every thing which the plaintiff may reasonably be given credit for being able to prove. Re-

* See cases cited in 1 Taylor's Evidence, p. 558.

member that a few pounds *extra* may serve as a sort of insurance against your being cast in a heavy amount of costs.

I advise you to become thoroughly well acquainted with the law concerning an *account stated*. How many a plaintiff has this little count saved from a nonsuit! Remember, that to support this count, the *sum claimed* must be *mentioned* to the defendant, or his agent, in order to render his admission or promise available evidence in support of this count; and this promise or admission must be made *before the writ issues*. Bear in mind these two hints, when you are advising your client, in a case where his evidence is defective, and the defendant suspected of being unconscientious or fraudulent. Do not, if you can avoid it, be yourself the person who obtains the promise or admission; but let your client send a clerk, or other agent, to the defendant for that purpose: and before you issue your writ, make such inquiries into the case as may show you the necessity of obtaining evidence of this kind. Delay issuing the writ for a little time, rather than go into court unprovided with such evidence.

Pause before you venture to add the "similiter;" or take what you may conceive to be the proper issue on your opponent's pleading, but which you may too late discover to be the wrong one, entailing on you a successful demurrer; or occasioning you a defeat at the trial: or rendering your success there nugatory, by affording your opponent ground for a motion in arrest of judgment, or for judgment *non obstante veredicto*. Look very suspiciously at the inviting replication *de injuriâ;* and be cautious

how, in adopting it, you trespass on the province of counsel, at those periods of the year when it is specially worth a defendant's while to take advantage of any false step which you may make, and so throw you over the long vacation. Have your wits about you at the judge's chambers. How much of the success or failure of a cause depends upon what takes place there! How signally shrewdness and self-possession there avail the possessor of those qualities: what advantages they secure his client over that of an opponent not so endowed! Be cautious in framing your summons and drawing your affidavits, remembering that these latter may afterward be brought against your clients. Not long ago, the fate of a keenly-contested cause at the assizes was suddenly determined by the production of an affidavit which had been made at judge's chambers, by a clerk of the London agent, on some collateral application: an admission appeared in that affidavit, which proved fatal to the case of the party on whose behalf it had been made: and the admission in question had been quite gratuitous on the part of the deponent! Take care how you consent to orders, enter into undertakings, and make admissions there; and do not be forced to do so, through having allowed yourself to be driven into a corner. How many an instance have I seen of the sad consequences of improvident admissions and concessions at judge's chambers, placing the client of the person making them, at desperate disadvantage, as against his opponent! Nothing seems more a matter of course, for instance, than obtaining further time to plead "*on the usual terms*," *i.e.*, pleading issuably, rejoining

gratis, and taking short notice of trial. But of how many advantages does this often deprive a client! And again, I have several times heard these terms heedlessly acquiesced in by the plaintiff's attorney's clerk, when the defendant was an executor, who, in due time, favored the plaintiff with a judgment confessed to *another* creditor of the plaintiff! an act which might, of course, have been prevented by the plaintiff's attorney insisting, as an additional condition of the defendant's obtaining time to plead, that he should not, in the mean time, confess judgment to any other creditor.

I have heard one of the ablest judges at present on the bench, several times regretting the imprudent admissions which are often hurriedly made at chambers; and this he did one day in court, when trying a case in which I was engaged. The action was brought on several bills of exchange, amounting to upwards of £1400; and the defendant, being sued as indorser, was defending on the ground that the agent who indorsed the bills, in point of *fact*, in the defendant's name, had no authority to do so; wherefore it was to have been contended that the indorsement was not, in point of law, the indorsement of the defendant. His only pleas were traverses of the indorsements. As soon, however, as his counsel had indicated that this was his answer to the action, the judge interposed, telling him that "he could do no such thing, for that he had admitted the indorsement," alluding to the usual *admission* (under Reg. Gen. H. T. 4 Will. IV., r. 20), which had been entered into by the defendant, to save expense; and in the column headed "description of document,"

among various letters and entries, were inserted the bills for which the actions were brought, and which were specified as "drawn by —, accepted by —, and *indorsed* by the defendant!" What the defendant had intended to admit, was only that his name had been written on the back of the bill, in point of fact; by no means that he (the defendant) had *indorsed* it. The judge, however, held him concluded by his admission, on the authority of the case of *Wilkes* v. *Hopkins* (1 Com. Bench Rep. 737), which was not then reported, and in which a similar disaster had ensued on a similar oversight.* The defendant, after a vain struggle with the judge, who, of course, adhered to the decision above cited, tendered a bill of exceptions, and the plaintiff had a verdict, which was not afterward disturbed; insolvency having intervened, and it being also considered hopeless to struggle against the decision of *Wilkes* v. *Hopkins*. Now, is it not obvious that both these were cases in which the defendant should have re-

* This case of *Wilkes* v. *Hopkins* is worth specifying here, as a warning to hasty practitioners. The action was against three persons on a bill of exchange, alleged to have been accepted by them, under the style of "The Newbridge Coal Company." Two of the defendants traversed the acceptance, while the third one, Bishop, who had, in point of fact, signed the acceptance for the company, suffered judgment by default. At the trial, the two defendants who had pleaded, denied that Bishop had had any authority to accept for them; but as the notice to admit stated the bill to have been "accepted by — Bishop, *for the defendants*, as the Newbridge Coal Company," the court held that such admission not only acknowledged the signature of Bishop, but precluded the defendants from denying that he had authority to bind them by his acceptance.

fused to make any admission at all, with reference to the indorsement? Whenever, therefore, you go to judge's chambers, especially during the hurry and bustle usually heralding in the assizes, bear in mind the necessity for being on your guard—doing nothing without due reflection, and never sending thither an inefficient or inexperienced substitute.

Write letters to your opponents sparingly, and with great caution, ever remembering that they may be produced against you, and that your client is bound by them. What can be more mortifying than to find him nonsuited, or have a verdict against him, through some stray expression of yours, in a letter to your opponent's attorney, who adduces it, in his extremity, as affording a conclusive admission in his favor? Of this I have seen several instances. It is impossible that an attorney or solicitor can be too cautious in his correspondence with his opponent, during the progress of an action or a suit, or in wording his notices to produce, and taking other formal steps in a cause. In addition to the instances which I have already given, relative to notices to admit, I will point your attention to three reported cases. The first was an action against the acceptor of a bill. The defendant's attorney had served on the plaintiff a notice to produce all papers relating to a bill, the description of which corresponded with that set forth in the declaration, "which said bill," continued the notice, "was accepted by the said defendant." The late Lord Tenterden held that this was *primâ facie* evidence of the defendant's acceptance.* The second was an action against the own-

* *Holt* v. *Squire*, Ryan and Mood., 282.

ers of a ship; and their *joint ownership* was inferred from an undertaking to appear for them, signed by their attorney, in which they were described as owners of the sloop in question.* This was a decision of the late Lord Ellenborough. The third was also a decision of the same distinguished judge. In an action of debt on deed, the defendant's attorney had admitted the signature of the attesting witness; and this was held to admit, by implication, the due execution of the instrument.† See, then, what vigilant circumspection you ought to exhibit on every occasion of your acting professionally! An inadvertent word or two of yours may strip your unsuspecting client of hundreds and thousands of pounds; nay, of his whole estate.

Never go to your opponent, especially your lay opponent, to try to entrap him into admissions, which you are afterward to depose to in court, and after that be subjected to bitter and severe cross-examination, and comment, by counsel, and, perhaps, also by the judge.

Draw your briefs with care, avoiding intemperate language, and making your statements and proofs as clear and terse as possible; remembering that briefs are often necessarily read hastily by counsel, whom a confused and prolix statement may prevent from readily acquiring a correct impression of the case, or make them even take a wrong one, which it may be too late to correct.

Give the pleadings at length; not contenting yourself with merely indicating their substance and

* *Marshall* v. *Clift*, 4 Campb., 133.

† *Milward* v. *Temple*, 1 Camp., 375

effect. A sheet or two spared by these means, is no compensation for the serious inconvenience and dangers often attending it. Counsel may be much misled by your so doing. The cause often depends on the very words in which the pleadings are couched, and on which critical issues have been taken. I saw, not long ago, for instance, a plaintiff's counsel about to submit to his adversary, owing to the client of the former having misled him as to the real nature of the pleadings. He had said, as to the only special plea, "The replication denies the agreement," which was proved as alleged in the plea; but the judge pointed out that the plaintiff stood much more favorably on the record—his replication being *de injuria*—which put in issue *every* traversable fact alleged in the plea. Now, why could not the replication have been set forth fully and correctly in the brief?

Never let a brief go into counsel's hands with *blanks* in it for names, dates, or sums of money. It not only has a very slovenly unbusiness-like appearance, but often greatly embarrasses counsel, who may not have you at their elbow to supply them with the necessary information. No brief should be regarded by you as complete, till you shall have carefully gone over it, and filled up every blank; or if that be, for any sufficient reason, impracticable before delivering the brief, take care to say as much, on the margin.

When there are two or more briefs, and especially if they be of length, or intricate in detail, or refer to many documents, use your utmost efforts to have the pages of all the briefs *numbered alike*, so that any

one counsel, having found what is required, during the progress of the cause, may in an instant place his companions in the same situation. Your law-stationer is surely bound to obey your orders in this respect. I have heard a neglect of this matter often loudly complained of, and with justice, as both inconvenient, and irritating, in sudden exigencies.

In cases of a little more difficulty or importance than usual, you may greatly facilitate the labors of counsel, and enable them readily to do their duty, by prefixing to the brief a neat analysis of the case, of both pleadings and facts, referring to the different pages in the brief where they will be found; and, above all, giving an alphabetical index of the names of the witnesses, and the pages where their proofs are placed.

If you have obtained what you may deem an able opinion upon the case, or even upon the evidence necessary to support it, copy that opinion in your brief, for the guidance of counsel at the trial: whom it may quickly put in possession of the true bearings of the cause, and apprise them of its difficulties, timely enabling them better to deal with them. The most eminent leading counsel by no means regard such assistance as superfluous; but, on the contrary, welcome it. More than once have I seen them, where a cause was called on before they had time to read their briefs, as it were, devour the "opinion"—written by some able and experienced junior, and rise, soon afterward, wonderfully possessed of the case—especially when engaged for the defendant.

Whenever your case involves localities, let me

entreat of you to take the trouble of giving a faithful sketch of the *locus in quo*, in one of the pages of your brief, or on a separate paper. A single glance at a spirited and *faithful* sketch of the scene of action, will be worth half-a-dozen consultations. It will fix the matter firmly in your counsel's mind, and prevent him from either being confused himself, or suffering the witnesses, judge, or jury to be confused. Take care also to have several copies in readiness (being able to prove their accuracy) to lay before the jury, while counsel is addressing them: a matter, that, of no slight importance to your client's interests. A good *model* of premises, or machinery, is of incalculable service, in giving counsel, and enabling them to give others, a clear view of the case which it illustrates. During last Easter Term, the Court of Common Pleas was occupied for an entire day with a troublesome motion for a new trial in a patent case. There was no model to illustrate the statements and arguments of counsel, or the evidence of the witnesses. The judges found it almost impossible to deal satisfactorily with the case: and at the close of the day, one of them (Mr. Justice Maule), as the court rose, observed, "In the absence of a model, the evidence might really all have been *read the wrong way!*"

Take special care, however, that your plan, or model be *fair*—perfectly faithful—made by a disinterested person, with no instructions whatever, but to prepare an impartial and accurate representation of the reality; one which will be acquiesced in by the opposite side, and by the witnesses. This will obtain for you credit with both the judge and the

jury, for the fair and candid spirit in which you have brought forward your case: and that credit may serve to turn the scale in your favor, in a question of doubt and difficulty. An opposite course of conduct is almost certain to prejudice you in professional and public estimation, and throw discredit on your client, and his case, seriously endangering one otherwise characterized by *bona fides*.

Always *over*-prove, rather than *under*-prove your case. By this, I mean, that when you have got so far in a cause as to the point of trial, you should not peril all that you have already expended, and damage your client's interests and your own reputation, by niggard considerations of expense in providing proofs of your case. Five or six pounds may, as it were, *insure* you against defeat, by excluding all fair chance of deficient proof. It is much better to have secured a verdict, burthened with the cost of a superfluous witness, but whose testimony *might*, in some turn of the cause, have been indispensable, than to have lost a verdict which you would have infallibly gained, if you had not chosen to run so near the wind, and neglected to come provided with proof which might not have increased your costs a couple of pounds—those, even, having to be paid by your opponent. There have been very many cases in which a party has *struck*, at the trial, especially at the assizes, on seeing his adversary come prepared with such superabundant proof as excluded all chance of a breakdown. What answer will you make to a client, whose defeat you have secured by such ill-judged *economy*, or rather parsimony? He will be the first and the loudest to exclaim against it. In

forming your judgment on these occasions, carefully consider the character, circumstances, and situation in life, of your proposed witnesses—whether they may not be liable to some sinister influence, which will either give a hostile bias to their evidence, or coerce them into suppression of what they know, and could really say: whether they be of weak mind and character, likely to flinch under cross-examination, or be flustered into forgetfulness, by the novel circumstance of having to appear and speak in open court. I have many a time observed such causes operate most prejudicially to the interests of the party calling witnesses of this description; and when such a one is in the box, saying something quite different from what he had led the attorney to expect, or failing, either totally or partially, to say what he had assured the attorney that he could and would say, how mortifying to hear the impatient counsel inquiring, "Have you any one else to speak to these facts?" while you recollect that if this contingency had but occurred to you, there were possibly half-a-dozen other persons who could have spoken clearly and conclusively on the subject! In determining on the person whom you propose to call, if you have more than one to select from, anticipate what may be asked of him on *cross-examination:* whether your opponent may not be able to suggest to his counsel questions tending effectually to disparage the credit of your witness, and to elicit from him matter which it may be disadvantageous to your client's interest to have disclosed. Always remember that the enemy will do his utmost to extract his own case out of the mouths of your witnesses, so as

to avoid calling witnesses himself, and have the last word to the jury. Never, if you can avoid it, get a *zealous* witness. A person of this description does infinitely greater harm than good, and may prejudice even the fairest case, with the jury. But, to enable yourself to act on this counsel, you must first have ascertained, by *personal observation*, the fact that the proposed witness is really a too eager and zealous witness. This personal observation will enable you either to decline calling him, or, if obliged to do so, enable you to put counsel on his guard, by making some such memorandum in your brief, opposite to the proof, as, "This witness is exceedingly eager and zealous, and will be required to be held with a tight rein."

Inquire well into the character and reputation of your witnesses, especially when their testimony is of great importance. Ask, in the neighborhood whence they come, of respectable persons, likely to be well informed on the subject, whether they have ever heard of any thing to their disadvantage: have they ever been in prison, and if so, on what charge, &c., &c. You may thus be able to turn off the most envenomed shaft of your opponent, whose eager cross-examination you may have anticipated, You may then suggest to the witness, that if the offensive question be put, he had better answer it promptly, and truly, and give any fair explanation he chooses. If, on the other hand, you are so remiss as to let all this come on you and on your witness, by surprise, his demeanor may do you great mischief, with both judge and jury: he may be tempted to fence with the question, and equivocate, and

so turn a matter really of no importance at all, into one of alarming consequence. Inquiries of this sort may also enable you, if you find that the proposed witness's character may be seriously impugned, to dispense with him altogether, and obtain some unexceptionable substitute. Be sure to apprize counsel, in your briefs, of every blot which you think it probable that your opponent may be able to detect in the character of your witnesses. This is a matter of great consequence.

Again. Exercise the utmost caution in dealing with your proposed witness, when you are inquiring from him what he knows concerning the facts, and taking down his evidence. Do not *suggest*, except to guide his memory, but *inquire*—and with judgment. Do not attempt to lead him toward a favorable view of the case; be on your guard against saying or doing any thing which may have, or seem to have, that tendency. Content yourself with asking him, but as closely and particularly as you choose, what he knows of the transaction, and let him tell his own story; and take down *his own expressions*, as nearly as possible—a matter this of great importance—however quaint or vulgar they may be, falling short only of grossness. Do not transmute his "round unvarnished tale" into a fine-spun statement which may suggest to counsel a mode of examining him, which may prove both embarrassing to the witness, and dangerous to the interests of your client. And when the witness has to speak to conversation, do not give the result, or a summary of the conversation to which he will, or is expected to speak; but have, as far as possible,

the *ipsissima verba:* as if you were drawing up depositions before a magistrate, in the first person; and give conversations, also, in the first person, and *verbatim.* If circumstances should occasion a considerable interval of time to elapse between your originally taking down your witnesses' evidence, and the time of trial, see them again, and read over to them their proof, if you should deem it necessary so to refresh their memory. Bestow great pains on marshaling your proofs: do it methodically, guided by your "opinion on evidence," or if you should not have deemed it necessary to obtain one—by your own careful examination of the pleadings, and the issues which they have developed. Do not be sparing of your notices to produce, and *subpœnas duces tecum;* but have your wits about you in preparing them. Consider well, in doing so; and take care to be precise and specific in your description of the documents or instruments which you call for, but without inadvertently slipping into dangerous admissions, such as I have already cautioned you against.* For a moment assume that your adversary will not produce what you require; what will be then your course? What presumptions will arise? Are you provided with the *secondary evidence* which you will then be entitled to offer? And bear in mind an important practical rule on this subject: that *there are no degrees in secondary evidence.* If, for instance, your opponent refuse to produce the instrument which you have called for, you may give *oral* evidence of its contents, even though he may be able to prove that you possess a counterpart, a

* *Ante*, pp. 173, *et seq.*

copy, or an abstract of it.* If, therefore, you be apprized of this rule, it may serve you greatly, should you happen not to have by you in court, nor be able to procure, such counterpart, copy, or abstract; the want of which may be supplied by yourself, or some clerk, who has seen, and recollects, the contents of the instrument withheld by your opponent. Pause before you yourself refuse thus to produce what is called for; since, although such refusal has no other *legal* effect than to let in secondary evidence on your opponent's part, it may, for instance, raise a *presumption* that the instrument is, where requisite, properly stamped;† and may also, in the absence of any good reason for the refusal, seriously prejudice your client's case with the jury.‡ If they are left the least chance of finding a verdict against you, this circumstance is very likely to induce them to do so, under the impression that your case can not be an honest one, if you appear guilty of uncandid or unconscientious conduct in presenting that case to them. Equally, in the case of your own instruments, and those of your opponent which you may have an opportunity of inspecting, note well whether there be any erasure, interlineation, or alteration. In the former case, be prepared with, and in the latter insist upon, satisfactory evidence to account for it. I can not too

* *Doe* v. *Ross*, 7 M. & W. 102; *Hall* v. *Ball*, 3 Mann. & Gr. 242; *Brown* v. *Woodman*, 6 C. & P. 206 (per Parke, B.); *Jeans* v. *Wheadon*, 2 Moody & Rob., 486 (per Cresswell, J.).

† *Crisp* v. *Anderson*, 1 Stark. Rep.

‡ *Roe* v. *Harvey*, 4 Burr, 2484; *Bate* v. *Kinsey*, 1 C. M & R. 41. Per Lord Lyndhurst.

strongly call your attention to this point. Consider its effect with reference to the *Stamp Laws*, as to both your own and your opponent's case, according as the fact may be; and also, generally, what will be the effect of a successful objection, occasioning the instrument proffered in evidence to be rejected. There have been several late cases on this subject, of great importance—especially that of *Davidson* v. *Cooper*, 11 M. & W. 778, which was affirmed, on error, in the Exchequer Chamber. It will be well worth your while to study this case carefully. After what I have said, it may be almost superfluous to recommend you to lay before your pleader, or counsel, in the first instance, the original, or a *fac-simile* of the document on which such a blot exists, calling his attention to it pointedly. It is a sad thing to have it disclosed for the first time, when too late to alter your course, or admit of your providing against the defect: and of such unfortunate cases I have seen several.

Have an early consultation: not, however, so long before the cause comes on, as to prevent the facts of your case from being fresh and vivid in the minds of counsel. A late and hurried consultation, on the other hand, is often a mere farce. You ought to make allowance for some suggestion being made by counsel, of an additional witness being required—and should leave sufficient time for obtaining one before the cause comes on. You may also, in the same way, get a document stamped which counsel may deem necessary to have stamped; and may be relieved from doing so, in cases where you had thought it necessary. Having mentioned the

subject of stamps, let me urge upon you to make yourselves accurately acquainted with the provisions of the Stamp Acts. If you be not, both you and your clients may often smart severely. I would throw out, here, by the way, for your consideration, whether, as conscientious men, you can feel yourselves at liberty to permit your clients to execute instruments required by the law to be first stamped, without their having been so stamped, merely because you may afterward obtain the benefit of the stamp, on paying the penalty of default. Is not this a deliberate fraud on the revenue? Are you not guilty of a moral offense in so doing—in thus refusing to *render unto Cæsar the things that are Cæsar's?* The penalty is accepted, as you well know, merely as an allowance to *bonâ fide* inadvertence; not as a premium on deliberate evasion and fraud.

If the case against you be of such a nature as warrants you, according to your best judgment as a conscientious and gentlemanly practitioner, in taking a technical objection to the reception of some instrument intended to be adduced against your client, and of which you may have an exact copy:—if, for instance, it had been wrung from your client by duress, or obtained by fraud, but of which you have no *legal* proof;—consider well, beforehand, whether the objection be really tenable. Do not show your teeth, unless you can bite; for it is likely to expose you to the derision of your opponent, and the severe comments of his counsel, in court. Take care to have the document carefully counted beforehand—every word of it—by one, or perhaps two persons, on whose accuracy you can rely, and let them be in

court: and also have you a copy of the Stamp Act in court, so that if you take the objection, you may do so effectually. How many a fraudulent instrument has thus been happily reduced to waste paper! Insufficiency of the stamp, is an objection much oftener overlooked, than may be supposed. One of the present judges, a great ornament to the bench, when at the bar, led for the plaintiff, in a cause on the northern circuit, in which he obtained a verdict, after a display of much practical skill and tact. As soon as the verdict had been returned, he said, while unrobing, to one of the juniors on the other side, "What could you all have been about to let *that deed* pass muster? The stamp is wrong!" And so it was! "Why," he was answered, "our attorney ought to have looked to *that*—" "So he ought," was the smiling reply—"but ours *did*—found out the blot, mentioned it at consultation, and thus enabled me to shape the case in such a way as to give us the best chance of hiding the blot." There is one important practical reason why you should always pay attention to the sufficiency of the stamp, in respect of an instrument which you intend to adduce in evidence; that should you have reason to doubt the admissibility of it, you may be able to get evidence which will nevertheless carry you through. If, for instance, you can prove an *admission*, by the defendant, or any act amounting to an admission, of some fact or statement contained in the inadmissible instrument, that admission is available evidence, notwithstanding it relate to the contents of a deed, or other written instrument, directly in issue in the cause. Thus were we unex-

pectedly defeated in the case of *Slatterie* v. *Pooley*, 6 Mee. & Welsb. 664 ; and the ruling of the judge at the trial was subsequently upheld, after much consideration, by the Court of Exchequer. [See also the cases of *Bethel* v. *Blencoe*, 3 Mann. & Gr. 119, *Howard* v. *Smith*, id. 254, *R.* v. *Welch*, 2 C. & Kirwan, 296 ; overruling Lord Tenterden's decision in *Bloxam* v. *Elsie*, Ry. & Moo. 187 ; and see 1 Tayl. Ev. 293, 294.] I have since seen several nonsuits avoided, by the aid of *Slatterie* v. *Pooley ;* but to be fore-warned is to be fore-armed : and to derive benefit from this case, you must be on the look-out beforehand, and provided with the requisite evidence to meet the emergency ; instead of recollecting too late, when the objection has been suddenly started, that had you known of it in time, you could easily have adduced evidence of such an admission as I have been speaking of. It is by means such as these that skillful and vigilant attorneys win often desperate causes.

In cases involving the necessity of adducing ancient documentary evidence, be sure to come provided with a correct copy of all important deeds or charters, so as not to impose on the judge and jury the necessity of spelling painfully over the faded, abbreviated contents of musty parchments. I have frequently seen judges cruelly wronged by such a procedure, and heard loud and just complaints from them on such occasions. Are not their labors at Nisi Prius sufficiently harassing without this gratuitous addition to them ?

When you have occasion to go to the Record, and other public offices, in order to search for, and

take copies of, ancient or other documents, with a view to the trial of a cause in which they are to be produced, be very particular in your procedure. If a copy is to be made, take care yourself to compare it with the original, or to have, at the trial, him who has done so. Do not rely on a copy handed to you by some one in the office. And if you have to prove that there are no such entries, &c., as would be fatal to your case, make the requisite search with diligent deliberation; and in the presence and with the assistance of some competent and experienced functionary in the office, whom you will subpœna to attend at the trial. I once saw a great tithe case very nearly broken down, for want of due attention to these matters. The defect was got over, but only through extreme ingenuity on the part of the leading counsel. Pray, anticipate, when you are thus engaged, the keen scrutiny which will be brought to bear on your movements, by your opponent's leading counsel at the trial; let this be a sharp stimulus to your exertions, that you may baffle him beforehand! What extreme anxiety and trepidation have I witnessed in even your ablest and most experienced seniors, as link after link of their chain of evidence, on which depended a case of great magnitude, was severely tested by acute and skillful counsel—repeatedly on the eve of detecting some *flaw!* With what a sickening sigh they turn to their own leader, when the judge, appearing seriously to entertain the proposed objection, says to him, "Well, Mr. ——, what have you to say to this? How easy it would have been," &c.

Look sharply after your *jury panel!* Otherwise

you may have, as one of your judges, one whom no evidence, no arguments, would persuade to give your client a verdict: one who may be his personal enemy, or the friend, or relation, of your opponent; or may belong to some trade, profession, or calling, which would be injuriously affected by your success; or enjoy rights in respect of property situated similarly with that which you seek to affect with liability. One of the present chief justices, a man of great experience, consummate prudence, and singular success in the conduct of causes, when at the bar, gave me a hint of this kind in the very first cause in which I ever held a brief with him. "Observe," said he, "what I am going to do, and do you the same when your turn comes. I am going to look at the jury panel, that I may get quietly rid of some obnoxious jurymen. Here our opponent is a publican, and the case is one in which all publicans are likely to feel a strong bias in his favor. Now peradventure there is a publican in the jury-box—but perhaps our client has already seen to this." That gentleman, however, on being asked, acknowledged that "he had not thought of it:" on which my leader, in a whisper to the usher, told him to get the jury panel from the officer; and, on looking over it, sure enough! there were *two publicans* quietly ensconced in the box, having, doubtless, had a hint from our opponent to be in attendance when the cause was called on. If this had been the case, however, the trick failed; for the two obnoxious gentlemen were quietly invited to retire—not knowing at whose instance—and their places were immediately filled by others, who appeared indifferent to

either party. The gentleman to whom I am referring attached such importance to this precaution, and said that he had seen so many instances of mischief arising from a neglect of it, that he told me he thought an attorney, who disregarded it, even guilty of *crassa negligentia!* Only the other day, I saw, at Guildhall, the brother of the defendant upon the jury! And a friend, to whom I this morning, in court, mentioned this circumstance, as one which I intended to bring before you, assured me, that he himself almost fancied, that he recollected, some years before, seeing the plaintiff himself sneaking into the jury box!

Beware how you try, before a common jury, a cause which, if your attention were pointedly called to the matter, you would see to be one imperatively calling for a special jury. I could mention a great number of cases in which the cruelest injustice has been done, through trying improperly by a common jury. Pray remember the strength of vulgar prejudices—the jealousy too often existing between different sections of society! By inattention to the point on which I am now dwelling, you are practically depriving your client of his right to a trial by his *peers*. I myself was in a case some little time ago, in which one of the parties, from an honorable anxiety to save his client the costs of a special jury, acquiesced in a common jury, who, to his consternation, gave a verdict for four hundred pounds to the plaintiff, who, the late Chief Justice Tindal had told them, was not entitled to one farthing. And the plaintiff's counsel, as soon as the verdict had been delivered, admitted to me that if there had been a

special jury, he could scarcely have hoped for even a farthing! It is true that such outrageous verdicts may be set aside, though the courts are, justly, very reluctant to interfere with the functions of jurymen; but if the verdict should be set aside, it would be only on payment of costs.* I have known instances of plaintiffs declining to proceed, on finding that the defendant was determined to have a special jury; and of defendants coming to satisfactory terms, on finding that the plaintiff insisted on a special jury. Take care, when your cause has been made a remanet, to *re-seal your record and jury process;* and when you are for the defendant, see that your opponent has done it.

Keep in your own hands, gentlemen, as one of your most important rights, the selection of your counsel. Who is answerable for the success of the action, or suit? You, or your client? Yourselves; and you have a right, which no client that was not a fool would venture to question, to fix on that counsel, or those counsel, whom you believe, in the undisturbed exercise of your discretion, best qualified to conduct your cause. I know that you are often harassed by

* One of this jury afterward declared that he had been resolved to give a verdict for the defendant; but that all the others had determined to give a verdict for the plaintiff; and after several hours' altercation, they put four slips of paper into a hat, bearing respectively the four sums of one farthing, fifty pounds, four hundred pounds, and *one thousand pounds*. It was agreed that the foreman should draw out one of them, and the verdict be accordingly: and he drew the slip which bore the sum of £400! Is it likely that a special jury, whether in town or country, could have been guilty of such cruel absurdity?

unseemly importunities on such occasions: but it is your duty to be firm, and to remind those who would thus trespass on your province, that it is you, and not they, who are charged with the responsibility of conducting the cause to a successful issue.

Having thus duly prepared your cause for trial; having secured the services of competent counsel, and done every thing in your power to secure a fair jury, you may regard yourselves as, comparatively speaking, *functi officio:* and then commence the duties and responsibilities of counsel. But, gentlemen, with no disposition to undervalue the services of counsel—the talent, tact, and learning of my brethren—I do deliberately assure you, and those brethren would agree with me in saying it, that, in seven cases out of ten, success or failure really depends on the attorney or solicitor—on his discretion and ability—on the manner in which he has discharged *his* duties, and "got up" his case. He may have been so thoughtless and negligent, that not even the most splendid eloquence, the astutest skill, the readiest and most extensive legal knowledge, can avail to supply his deficiencies, or avert the unhappy consequences of his incompetency or negligence. "'Tis hard," says poor Richard, "to make an empty sack stand up."

Do not, however, suppose that with the verdict, your duty and anxieties terminate. A great deal remains to be done, in order to give your client the fruits of his verdict. Keep a lynx's eye on the defendant, if you have reason to doubt his character, or means—lest he leave you in the lurch—with nothing to operate upon, on behalf of your client:

and, if your inquiries shall have warranted you in doing so, come to trial with an affidavit ready to be sworn, in the event of your getting a verdict, for the purpose of inducing the judge to grant you immediate execution. A day or two is often, in these cases, of the last importance, and are yet sometimes lost, because you are unable to satisfy the judge, on oath, that yours is a case for instant execution, though you may have no moral doubt of the fact, and could easily have enabled yourself, or others, to swear to that fact. If the defendant appear to be resisting your action to the last, in spite of his obviously having no merits, take the alarm: quietly have him watched, as the time of trial draws near, and by some shrewd, experienced observer, who will give you instant notice of any suspicious movements of the defendant—such as preparing to remove, and make away with his effects, by bill of sale, or otherwise; or report to you expressions of the defendant, of an intention to do so; and which will, when sworn to, doubtless induce a judge to give give you execution as quickly as you can possibly get it.

Be careful about taking down issues in fact for trial, while issues in law are pending. You are, of course, at liberty to do so; but you may seriously embarrass yourself, if not even fatally compromise your client's interests by doing so. This is a question very proper for counsel to determine, on a careful consideration of the whole record.

Beware, when concerned for the defendant, how you force on a reluctant plaintiff. It is almost proverbial, that a defendant, by doing so, only helps on

a plaintiff to a verdict which he would not otherwise have obtained, and had become afraid of even asking for. I have known between twenty and thirty instances of this in my own practice: not that I ever advised it, for I almost invariably discountenance it, as, I apprehend, does every practitioner of even only moderate prudence and experience. In a case of this sort, before that great lawyer and eminent judge, Lord Tenterden, as soon as it had been intimated to him, on the plaintiff's obtaining a verdict, that he had been ruled on by the defendant, his lordship leaned down to the defendant's attorney, who was sitting with a rueful countenance, beneath, and whispered, "So they tell me you *ruled on* the plaintiff? Well, you will know better another time. You are but a young man; and I will tell you, that when young at the bar, I, too, once advised a client as foolishly as you have advised yours: but I never did so again! Nor do you!" There certainly does seem a fatality about these cases. I own, however, that there are occasions on which you are forced to take this step; when the case is really clear beyond all possible doubt, or you are concerned in winding up affairs which can not remain unsettled through actions pending. Under such circumstances, you must needs take your chance.

When you are concerned for a defendant who is sued in an unrighteous spirit—of whom the plaintiff is seeking to take unjust advantage, to act on the letter, contrary to the spirit of the law—do not, with all your desire to adopt an honorable and liberal course of practice, throw away any technical advantages which your vigilance and promptitude may

be able to secure your client. If, for instance, the declaration be a little out of the ordinary way, lay a copy of it, at the earliest possible moment, before your counsel or pleader, with instructions to demur generally, or *specially*, as he may think proper; and in the mean time dispatch another copy immediately to your client, if he be in the country. You thus give your counsel or pleader an opportunity of leisurely considering the case, and of demurring *specially*, not having been placed under terms to plead issuably, as is but too often the case, with indolent or inexperienced practitioners. I need hardly remind you that it would be a breach of such terms to demur specially; and the loss of that opportunity is often very vexatious and injurious; for under a special demurrer you may, of course, take advantage of any ground of either *general* or special demurrer, while under a general demurrer you are shut out from availing yourself of any objection for matter of mere form. In short, I can not too strongly urge on you the advantages of promptitude in laying papers before counsel, and also communicating with your own client, whether in town or country. If you be the London agent, and the cause relate to accounts, written entries, and other documents, desire your country client *himself* to look into such documents and accounts, and not to rest satisfied with his lay client's representations concerning them. Tell your client to insist on seeing them at once; and in your own case also insist on your lay client showing them to you. You may thus detect some alteration, or interlineation, or erasure, which would, if suddenly disclosed, and for the first time, at the

trial, put you to a fatal non-plus, for want of evidence to show how that, which, unexplained, might appear to a jury to have been fraudulent, was really the result of accident and *bona fide* mistake. How satisfactorily this will enable you to instruct counsel, and prevent their being taken by surprise!

When you are about to look up evidence in support of a pedigree case, first of all cast your eye carefully over the law applicable to that important subject, in some established text-book on evidence,* in order that you may refresh your mind with the general principles by which your inquiries should be regulated, and which, I am persuaded, are too often lost sight of on such occasions. The result of this is, either that a great deal of valuable, of inestimable evidence, is passed by, and neglected altogether, or much time, labor, and expense, are consumed in collecting mere gossip, utterly irrelevant, useless, and inadmissible, and loading briefs with the same commodity. Reflect, that, from the necessity of the case, the law allows you, on these occasions, to infringe a great and salutary principle, on which *hearsay* evidence is rejected; but that certain limits are nevertheless prescribed, which must not be transgressed. Then, consider from what *speakers* the hearsay must proceed, viz., from persons *de jure* related by blood, or *marriage*, to the family in question. Hence, it is useless to obtain declarations of an illegitimate member of that family.† Again, observe that the disso-

* See Taylor's Evidence, vol. i. pp. 414, *et seq.*, for a clear and correct statement of the existing law on this subject.

† *Doe* v. *Barton*, 2 M. & Rob. 28; *Doe* v. *Davies*, 16 Law Journal (new series), Q. B. 218.

lution, by death, of the tie of marriage, does not render inadmissible declarations made by the husband, after his wife's death. Bear in mind, moreover, that so extensive is the latitude allowed by the law on these occasions, that *hearsay upon hearsay* is admissible—which lets in often a flood of important evidence, obviously, however, requiring to be watched with extreme vigilance and jealousy. Thus, a deceased widow's declarations, concerning statements represented by her to have been made by her late husband, as to who his cousins were, are admissible; as also the declaration of a deceased relative, in which he asserts, generally, that *he has heard* what he states.* Even *general repute in the family*, if proved by the testimony of a surviving member of it, is admissible in evidence.† But observe, all this while, that there is an essential preliminary —that you must establish the relationship, with the family, of the individual whose declarations you seek to adduce, by proof *independent of any such declaration.* If this were not so, a total stranger, by merely *claiming* alliance with a family, and then *making statements* concerning it, might perpetrate ruinous fraud, on a grand scale, after his death, and no family, or its property, would be safe. Still it is unnecessary to prove the exact degree of relationship; it will suffice to show that the persons in

* *Doe* v. *Randall*, 2 Moo. & Payne, 20; *Monckton* v. *Attorney-General*, 2 Russ. & Mylne, 165, 6; *Slaney* v. *Wade*, 7 Simon 611 (S. C. 1 Mylne & Cr. 355); *Robson* v. *Attorney-General*, 10 Cl. & Finelly, 500–503; *Davies* v. *Lowndes*, 6 Mann. & Gr. 525–7.

† *Doe* v. *Griffin*, 15 East, 293; B. N. P. 295.

question were, in *some* manner, connected by blood or marriage.* Nor is the court very exacting in this matter, but is, reasonably enough, satisfied with slight evidence of the fact of such relationship.

Now, bearing in mind these few leading principles, when entering on these important and often difficult investigations, first of all make it your business to set down on paper the names of every living lineal and collateral relative of the *propositus*, whom diligent inquiry can apprize you of; and then, keeping your eye on the pedigree which you seek to establish, go first to the oldest persons, and put to them all such questions as your own attention and sagacity may suggest, respecting what it must appear probable to you that they may have seen, known, and heard, concerning great-grandfathers, grandmothers, fathers and mothers, uncles, aunts, cousins, and their respective wives and husbands. Inquire what were the personal habits of these people: where they lived; whither they were in the habit of going; and do all this with a view to being put upon the scent of witnesses not related to the family, but who may have heard from members of it most important statements concerning it. Parish clerks, sextons, old overseers, and the inhabitants of alms-houses and workhouses, are often depositaries of critical evidence on these subjects, if they could only be thought of in time, by an acute and patient inquirer. By following out one of these suggestions, a little while ago, an essential and long missing link in a chain of pedigree evidence was unexpectedly supplied, and a claim established to property of con-

* *Vowles* v. *Young*, 13 Ves. 147.

siderable value. An old lady was asked, among many other questions, where her deceased uncle used to spend his holidays or vacations: on this being ascertained, further search was made in the quarter indicated, and it turned out that he generally went to assist A. B., a cousin of his, to enable him to spend a fortnight with other relatives of his, at a great distance: and it was by means of this last piece of evidence that the *hiatus valdè deflendus* was supplied. Before concluding this section, I would add:—Firstly, That the declaration sought to be established may be regarded as confined to questions of *descent* and *relationship:* to the facts of *births*, *deaths*, and *marriages*, and the *times when*, but not the *places where*, they occurred. This is a point often lost sight of in looking up this kind of evidence; and, consequently, much rubbish is collected together, relating to independent facts, which are utterly inadmissible. Secondly, Not merely oral declarations of deceased relatives and connections by marriage, are admissible, but *family conduct*, such as the tacit recognition of relationship, the disposition and devolution of property, &c., &c., and other matters, *ejusdem generis;* as affording evidence from which may be inferred the belief and opinion of the family, as to the existence or non-existence of facts, which it is the interest of one or other of the parties to establish or controvert. To an acute, reflecting observer, *silence* affords often the most cogent of proofs or presumptions. Suppose, for instance, the question to be, whether A., the person from whom the claimant traces his descent, was the son of a particular testator. The fact that all the mem-

bers of his family appear to have been mentioned in his will, but that no notice is taken of A., is strong evidence to show either that he was not the testator's son, or that, if he had been, he had died without issue before the date of the will.* Again, if you should seek to prove that one Z. died childless, the production of his will, in which no notice is taken of his family, but by which his property is left to strangers, or collateral relations, is cogent evidence of his having died childless.† Now, why do I mention such instances, and descend into such minute particularity? For the sake of you younger practitioners; for articled clerks, desirous of thoroughly and scientifically practicing and studying their profession; to whom a timely hint may prove as seeds dropped into a fertile soil, presently to spring up and bear abundantly. It is sought to develop in them a shrewd and watchful spirit, habituated to address itself heartily and patiently to whatever it takes in hand.

Never send original documents to the chambers of pleaders or counsel nor suffer them to lie about the office, or be used in the ordinary course of business, if they be of any importance, unless there exist some special reason for doing so. Have them copied exactly, and then lock up the originals. I recollect the client of a friend of mine rushing into his chambers one day, pale and breathless, to ask where he had put the bill of exchange for (if I recollect aright) upwards of £700, on which he had been declaring.

* Tracy's Peerage, 10 Clark and Finelly, 190; *Robson* v. *Attorney-General*, id. 498, 500.

† *Hungate* v. *Gascoigne* 2 Phillips, 25.

My friend assured him that it had been sent home with the declaration: his client protested that it could not have been: all his clerks said the same, having looked every where for it in vain. All my friend's papers, and nearly half his library, were forthwith overhauled, but in vain. After two days of terrible distress, the gentleman was relieved by tidings of his missing bill: it had, somehow or other, got mixed up with other papers, which had found their way to his conveyancer, who had never been thought of by the parties, and did not open the packet till nearly two days after having received it, when he found the missing document among a number of other papers! I knew of another case, in which a little but important agreement was lost, in some such way as the foregoing, and was never found again. On this the attorney was sued by his client for the loss of the instrument, and was advised to compromise the action, at a considerable sacrifice, rather than run the risk of an action, and experience the vexation and peril of having such an act of negligence exposed to the world.

As I have spoken of compromising proceedings, let me take the opportunity of advising you to exercise great caution in either doing so yourselves, or advising clients to do so. Peacemaking is indeed a beautiful branch of your duties, perhaps the loveliest of your functions; but when you are invited to compromise, to "purchase peace," to apologize, to make acknowledgments, beware lest your eager, well-meant, but short-sighted efforts, should serve only to entail exquisite and galling future mortification and insult on yourselves or clients. Consider

well the opponent with whom you have to deal: whether he be a gentleman, who will meet you, and act upon your offer, or concession, in a frank and gentlemanly spirit, or whether he be a coarse, mean-minded wretch, who will convert what you have done, forever after into a sting and reproach, misrepresenting your motives, and crediting you with only pusillanimous and paltry ones. Remember that it is very easy for counsel to make a flourishing and pompous statement in court—highly satisfactory to themselves, and the jury, whose labors are thereby pleasantly cut short; but it is for you to realize to yourselves the scenes which may await your client, at home, and in his neighborhood: where the honeyed accents of counsel are not heard, nor is seen the bland acquiescing countenance of the judge! If your client be not present, and really approving of what you are doing, you undertake a grave responsibility in consenting to make humiliating acknowledgments, or concessions, in his name, and on his behalf, and may open upon yourself a stream of perpetual bitterness and recrimination hereafter. You should also, on such occasions, consider well the nature of the dispute which exists, with reference to the admission or acknowledgment insisted on—whether it be, or be not, such an one as warrants such a course, or admits of its being adopted without seriously compromising important and permanent interests, or character. There are cases in which it is your sacred duty to *fight it out:* to listen to no proposals whatever—to give, or take, no quarter. These occasions, however, are rare; but when they arise, require your utmost firmness to deal with them.

I earnestly advise you, on the other hand, to be prompt in considering whether the case in which you are concerned be not such as to justify you in offering a handsome unequivocal apology (of course without prejudice) at the very earliest stage of the proceedings—as in slander, libel, or assault—before much expense has been incurred, or the feelings of both parties have become embittered and exasperated by a prolonged contest. COSTS are a dark cloud which too often suddenly obscures the brightest dawn of reconciliation, and plunges the litigants into the deepest shadows of malignant hostility. And this is, moreover, a topic which too often exposes the attorney to ungenerous and injurious comment and insinuation, in open court, on the part of a counsel disposed to deal in such defamatory wares. Stop the mouth, however, of such an one, by taking the advice now proffered you. Do what is suggested in such a manner, and at such a period, as places your motives and conduct above all suspicion—beyond the reach of misrepresentation.

When you are planning the scheme of an action or defense—when preparing your brief—keep constantly before your mind's eye the stern visage of the *taxing master*, and the sarcastic smile of your opponent, as he succeeds in getting item after item of your bill struck off!

As a general rule, always take a written retainer from your client, before you commence either an action or a suit. You do not know how soon you may fall into a misunderstanding with him, and he may choose, then, to put you to proof which you may find it extremely difficult to adduce. This little

precaution, however, cuts off all chance of successful annoyance from *that* quarter; and if your client should hesitate, you can easily enable yourself to tell him, *truly*, that you make the application from no distrust of him, but because it is a uniform rule of your practice to act on the recommendation of one of the greatest judges—Lord Tenderden. Here it is. "I think it right to state, that every respectable attorney ought, before he brings an action, to take a written direction to do so, from his client, before commencing it. He ought to do this, as well for his own sake, as for that of his client. It is much better for the former, because it gets rid of all difficulty about proving his *retainer;* and it would also be better for a great many clients, as it would put them on their guard, and prevent them from being drawn into law suits without their own express direction." * The obtaining of this retainer was formerly a matter of necessity instead of choice—both statutes † and rules of court requiring the attorney's retainer, or warrant to prosecute, or defend, to be actually filed at an early stage of the cause, under a penalty of £10 for omitting to do so. This, however, has long ceased to be exacted, in practice. Follow up this step by a due amount of personal communication with your client, as you go along, apprising him of every offer of importance made by your opponent, and also, whenever you are about to enter on any new line of operations, inducing the

* *Owen* v. *Ord*, 3 Carr. & Payne, 349. See, in Equity, *Lord* v. *Kellet*, 2 M. & K. 1: *Wiggins* v. *Pepper*, 403; *Hall* v. *Laver*, 1 Hare, 571.

† Stat. 8 Anne, c. 16.

necessity of considerable, or increased, outlay. He can never afterward justly complain that he has been taken by surprise, or left in the dark as to his liabilities.

Take care how you enter into "undertakings," to be performed by, as you may imagine and intend, your clients, but to the performance of which you may be yourselves held personally. Through haste or inexperience, attorneys and solicitors often slip into a noose from which they can not extricate themselves. Whenever agreements and undertakings of any kind are entered into in your own names, take care to use such phraseology as will exempt yourselves from a liability which you do not intend to bear, nor ever wished to be understood as doing so. How you should effect this, in each particular case, is beyond my province here to point out; you can easily refer to any treatise on the law of principal and agent, where you will find how instruments of any kind—bills, notes, &c., &c.—should be framed by an agent, so as to attach liability to his principal* only. The observations of the late Lord Ellenborough, C. J., in *Leadbitter* v. *Farrow*, 5 M. & S. 345, with reference to an agent's becoming a party to negotiable securities, are worthy of your attention, as affording a plain general rule for your own guidance, on the occasions to which I have been adverting. "Is it not a universal rule, that a man who puts his name to a bill of exchange, thereby makes himself personally liable, unless he state, on the face of the

* The obvious mode of an agent's signing a document, so as to bind not himself, but his principal, is —— —— "for C. D., A. B.

bill, that he subscribes it only "*for*" another, or "by procuration of" another—which are words of exclusion? Unless he say, plainly, "I am the *mere scribe*," he becomes personally liable." Let me illustrate the consequences of losing sight of this rule. Mr. Ashurst,* the solicitor for the London creditors of a country bankrupt, in a letter to the solicitor for the country creditors, thus expressed himself: "I am willing, on behalf of the London creditors, to bear two-thirds of the expense of those (barristers) who may be engaged to resist Mr. K.'s proof under the commission, &c.; and *I hereby undertake to bear and pay, on behalf of these creditors, two-thirds of the expenses incident thereto, accordingly*." Another meeting having been appointed, the defendant declared that he had no objection to bear, as before, the proportion of the expense of a barrister's attendance. Five meetings in all took place for these objects; and it was held by the court that Mr. Ashurst, who had been sued on the undertaking above mentioned, was personally liable to pay two-thirds of the expenses of all the meetings.

As an additional incentive to caution against committing yourselves in writing, let me remind you that you are amenable, as officers of the court, to their summary jurisdiction, and they will enforce undertakings, entered into by you in your characters of attorneys and solicitors, without reference to technical objections to the legal validity of such instruments. Take, for instance, the recent case of *Ex parte Hilliard*, 2 Dow. & Lowndes, 919. There the defendant's attorney entered into the following

* *Hall* v. *Ashurst*, Gent., 3 Tyrr. 420.

undertaking: "I agree to pay to Mr. Samuel Smith, within one calendar month from this day, the sum of £29. Witness my hand, this 30th October, 1844. J. H. HILLIARD." You will instantly see that this undertaking was void, in point of law, through non-compliance with the Statute of Frauds (21 Car. II., c. 3, § 4). Nevertheless the court enforced performance of the agreement by him, their own officer, who had made it—and enforced it most justly.* While, therefore, I would not tell you, in the language of the old saw, to "*say* what you please," I advise you to "*mind what you write*;" for while, on the one hand, you may incur a personal liability which you never intended, so, on the other, you may attach a liability to your client, by which he and his interests may be seriously prejudiced.†

While speaking of the caution requisite in framing notices to produce, and to admit,‡ I omitted to draw your attention to a circumstance connected with that subject, of considerable practical importance. Bear in mind that the only object of including documents in a notice to admit, is, to entitle you to costs of proof, if you should offer the document in evidence, and your opponent drive you to such proof, instead of admitting it. Now if the witness who is to prove such document, be also a necessary witness to prove other facts, you will, if successful, be entitled to the costs of calling such witness, even though the document so proved by

* See also the later cases of *In re Fairthorne*, 3 D. & L. 548, and *Titterton* v. *Shepherd*, id., p. 775, as instances of the extent to which the courts go, on these occasions.

† *Ante*, p. 175, *et seq.* ‡ *Ante*, p. 172, *et seq.*

him was not included in your notice to admit. It would, in this case, be unnecessary, and also might be very imprudent, to include the document in your notice. And indeed it would be well worth your while, on many occasions, to take a pleader's or counsel's opinion, whether it would not be advisable to omit a particular document from your notice, and submit to the trifling expense of proving such document. I know of cases in which an inconsiderate insertion of a particular document, in a notice to admit, has exposed the case of the party doing so, to his opponent, enabling him to alter his own course altogether, and even to resort to flagitious means for the purpose of doing so effectually. An experienced friend told me, some little time ago, that there were no parts of briefs which he studied more carefully, than the notices to produce, and admit, on both sides—and that he had often, by these means, gained a clew to the case of his opponent, which he could not otherwise have obtained. For the same reason, I advise you not to include in a notice to produce, any documents which you know to be in the hands of a third person, and the production of which you may compel by a *subpœna duces tecum*, without having called your opponent's attention to the matter. These may seem excessively minute and uninteresting details; but your seniors will tell you that it is the watchful attention to these and similar matters, which constitutes skillful and successful practice: it is inattention to them, which causes inferior practitioners to be continually tripped up by unperceived obstacles—to lose causes, they know not how!

Never be *over sanguine* with your clients. By being so, you only buoy them up with false hopes, and needlessly expose yourself to bitter repinings and reproaches. The longer you continue in the profession, and the greater your experience and knowledge, the further you will be removed from this tendency. If of a naturally sanguine temperament, be sedulously on your guard against its betraying you into the imprudence against which I am cautioning you. One who thus errs, may be said to have imperfect mental vision—to be unable to see events as they really are, or are likely to be—and, on the contrary, to see them distorted through the glistening but delusive medium of hopes and wishes.

Never, except under very special circumstances, allow your clients to refer their disputes to laymen; but insist on their being referred to those who have been trained all their lives into habits of systematic, dispassionate, disinterested investigation—who are acquainted with the rules of evidence, and familiar with those principles of law and equity by which alone the affairs of mankind can be satisfactorily dealt with. I could fill an entire lecture with illustrations of the propriety of this advice—instances which have come under my own observation, of grievous injustice inflicted by well-meaning but incompetent lay arbitrators. I appeal to the universal experience of the profession on the subject—to every judge on the bench. How often do we hear them deploring the consequences which have attended the resort to lay arbitration! leading to inconveniences, injuries, and injustice, which can not be effectually remedied. When a lawyer is

called upon to arbitrate, you have a strong security for his doing his duty, in respect of attention and integrity, in the circumstance of his being peculiarly amenable to professional opinion—to the criticism of his brethren. He knows that what he is to do, will in all probability be subjected to legal scrutiny, at the instance of a dissatisfied party—who will submit the "Award" to counsel for their opinion, and even move the court to set it aside; when his miscarriage will be exposed to general observation, and may possibly provoke unfriendly comment. Aware of this, he is likely to use his utmost exertions to appear creditably before his brethren, and the courts: and has, moreover, the opportunity of consulting friends of great experience and learning, in cases of doubt or difficulty. When your client presses you to place the matter in the hands of a layman, explain to him the critical nature of an award; how hard it is so to frame it, as to withstand the scrutiny to which the unsuccessful party is pretty sure to expose it; and that the courts will make no allowance for a blunder in point of law, merely on the ground that the arbitrator was a layman, ignorant of law and its technicalities. This is often found out by the lay client, only when too late—when he finds important rights gone irrecoverably, which a competent arbitrator could have insured him forever, and without hesitation. It was once held otherwise; but on a late occasion the rule above stated was thoroughly established. I am alluding to the case of *Huntig* v. *Ralling*, 8 Dowl., P. C. 879, which you should show to your client. There, a question concerning a charter-

party was referred to two merchants, who made an award contrary to law: where the losing party applied to the court to set aside the award, on the ground that "the arbitrators were unlearned persons." His counsel (the present Chief Baron, Sir Frederick Pollock) was, however, thus stopped, *in limine*, by the Court of Exchequer.

PARKE, B. "The distinction between a professional and a lay arbitrator is quite abandoned. Where parties consent to refer matters to an arbitrator, they must abide by his decision, whether he be a professional man or not."

ALDERSON, B. "You have selected your judge, and now wish to appeal from the very tribunal which you have chosen. There is a very well-considered judgment* of Lord Eldon, which decides that there is no difference between a professional and a non-professional arbitrator. Whether the question before the arbitrators be one of law or fact, is altogether immaterial: the parties are equally bound by his decision." So the rule was refused. Now, here, for aught that appears in the report, a merchant may have been ordered, by his own appointed lay judge, to pay several thousand pounds to his opponent, to which that opponent had no right whatever! In a still more recent case (*Fuller* v. *Fenwick*, 3 Com. B. Rep. 705), the rule laid down in the case above cited, was deliberately approved of, and acted on, by the Court of Common Pleas. There, the arbitrator had improperly treated that as a *penalty*, only, which the express contract of the parties had made stipulated and ascertained damages; but

* Probably, *Young* v. *Walter*, 9 Vesey, 364.

his blunder was not apparent on the face of his award, and the court refused either to set it aside, or even refer it back to him for reconsideration! It is true that in this case the arbitrator was a barrister; but the court took occasion to say, that if he had been a layman, it would have made no difference in their decision. "The question as to how far the courts will interfere to correct the mistake of an arbitrator, in fact or in law," said Chief Justice Wild, "has been presented in every possible shape. In some of the cases, the discussion has proceeded upon a supposed difference, where a matter of *law* was in question, between a lay and professional arbitrator. Lord Ellenborough first,* and subsequently all the judges, repudiated any such distinction; holding, that where the parties have thought fit to withdraw from the decision of the ordinary tribunals, and have selected their own judge, they must be content to abide by his judgment. The question has also been discussed *where some point of law has suddenly arisen in the course of the inquiry*"—[Observe this contingency—one which may occur in the course of apparently the simplest case conceivable, and which yet is foolishly submitted to a *layman*] "and where, though the matter was present to the mind of the arbitrator, but little time was afforded for consideration; and the courts have said, that whether the arbitrator was a professional man, or a layman, they would not inquire whether his conclusion was right or not, unless they could, upon the face of the award, distinctly see that the arbitrator, professing and intend-

* *Sharman* v. *Bell*, 5 M. & S. 504.

ing to decide in accordance with law, had, unintentionally and mistakingly, decided contrary to law. . . . . Here, I am unable to trace the course of reasoning by which the arbitrator came to the conclusion he did: yet there is nothing on the face of the award, to show that he has done wrong. . . . . It is to be observed that these rules tend to create great delay and expense, and to defeat, in many cases, the object of the parties; but, having obtained the decision of the tribunal which they themselves have chosen, they have but little ground of complaint, if its judgment should happen to be erroneous." Now, if you should happen to have some obstinate client, bent upon referring his dispute to a layman, I have given you the opportunity of explaining clearly to him the possible, nay, probable consequences of the false step which he meditates. I knew a case, lately, where an ignorant and prejudiced lay arbitrator, who, nevertheless, was a wealthy and influential person, decided a case referred to him in glaring contravention of the rules of law, inflicting exquisite mortification on the defeated party, who had insisted on having a lay arbitrator to decide his differences. There was no help for it. The award was assailed, yet ineffectually, and stands at this moment a perpetual eye-sore, and monument of a client's folly. Before quitting this topic, let me suggest the propriety of your inserting a clause in the order of reference, empowering your arbitrator to state facts for the opinion of the court, if he shall think proper. He can not do this without express authority. "It is always competent," says Chief Justice Wilde, in the case last cited, "to

reserve points of law for the opinion of the court, *if the parties choose so to stipulate*, rather than confide in the judgment and discretion of the arbitrator." It is almost always prudent thus to stipulate: but how can a lay arbitrator exercise this power, at least, effectually?

Set your faces against a practice which still prevails, of referring to two arbitrators, with power, if they can not agree, to appoint a third person, as umpire. It is a very bungling mode of procedure, at best; and often gives rise to serious difficulties and inconveniences. Select, in the first instance, with due deliberation, some single individual, thoroughly competent; arm him with proper powers as to certifying, stating facts, &c.; and then abide by his decision. If, however, you be overruled in this matter by your client, or have sufficient reasons of your own for taking this roundabout course, at all events take care either to agree upon the umpire, and name him in the submission, or require the arbitrators to name him, before they enter on the arbitration. You may otherwise run the risk of their never being able to agree upon an umpire—having taken totally different views of the case, and become, in the progress of the inquiry, zealous partisans. Of this I knew a striking instance in London, a few months ago; and in a pretty predicament the parties found themselves. It was impossible to get the two arbitrators to concur in an appointment; the whole reference, therefore, proved abortive; the action was resumed after a grievous delay; and ultimately ended in a disadvantageous compromise.

When you are yourselves arbitrators, never avail

yourselves of the power given you to examine the *parties*, except in the very extremest cases, when justice can not possibly be done without your exercising such power. I do not think you could find a single member of the bar, whose opinion was worth having, advise you otherwise. As far as my own experience has gone, I have scarcely ever seen the power exercised, without its entailing great vexation and anxiety on the arbitrator, and exposing the parties to temptations too strong to be resisted.

If the matter be of adequate difficulty or importance, obtain the assistance of counsel in drawing up your award, in order that you may avoid the risk of a successful application to set it aside, for technical insufficiency. If the award should, even then, be successfully impeached, you have a great degree of responsibility taken off your shoulders.

As arbitrators, be calm, patient, attentive, firm, and courteous, to all before you. Let each party conduct his case in his own way, unless you clearly see that he is taking an objectionable course. If you perceive symptoms of a disposition, on either side, to spin out the proceedings, refer, significantly, to the clause in the submission which gives you control over the costs. When your mind is made up on any part of the inquiry, in mercy to the parties, say as much, but, of course, without disclosing in whose favor you are; adding, "I am ready to hear more evidence, if the parties wish it, but I think I have heard already sufficient." These few words may save fifty or a hundred pounds to the parties. Do not interfere with the witnesses, unless you feel it necessary to do so for the purposes of justice; as,

for instance, where you, as an indifferent, impartial person, observe that the witness can give important information, which one of the parties has inadvertently, or designedly, failed to elicit; or which both of them may be afraid to ask for. Take full notes; and keep your mind's eye constantly fixed on the true points of the case, so that you may check the divergencies of the parties. Let your articled clerk be present, and, as a very useful exercise, take down the evidence, and attend to all that goes on. This will teach him an important part of his profession.

In awarding costs, exercise the soundest discretion which you can bring to bear on the subject, or you may inflict grievous injustice. There is a difference of opinion, at the bar, as to the proper course of procedure, where costs are in an arbitrator's discretion. With some, the rule is, *væ victis!* and they give the successful party the full benefit of his victory, awarding him all the costs, even as if the cause had been decided by a jury; but with others, and a great majority, the award of costs is governed by their view of the conduct of the parties—according as it may have been straightforward and candid, or the reverse. I think that this latter is the proper mode of exercising the discretion vested in the arbitrator, though in this I unfortunately differ from one of the ablest and most experienced arbitrators at the bar. He holds, that in the absence of very special circumstances, affording evidence, for instance, of gross unconscientiousness, the party whom his award shows to have been, from the first, in the right, ought to have the full fruits of success.

Such are the observations which have occurred

to me, on this responsible part of your duties. It is because I deem arbitrations so important, that I have dwelt so long and minutely upon what I conceive to be the proper mode of conducting them. An arbitrator's trust is a very sacred one. He is to all intents and purposes a *judge*—a judge of fact, of law, and equity; one whom both parties have agreed to invest with judicial attributes; whose decision may be final, even though erroneous: and any honorable and conscientious arbitrator can not fail of being severely mortified and harassed, if it should afterward be shown that, from either ignorance or inadvertence, he has miscarried, and thereby inflicted serious injury, and perpetrated injustice. Address, therefore, your best energies to the task, cherishing constantly a lively sense of your responsibility. Beware of being secretly biased by friendship, prejudice, or other undue influence. However much you may be disgusted by the conduct of either party; however irritated and provoked by insolence, rudeness, or coarseness; remember! take care that you hold the scales of justice even, deciding according to the very right of the case, unmoved by any disturbing force whatever.

When you appear as advocates before an arbitrator, reflect that you have undertaken a very responsible duty, sometimes far more arduous than you had anticipated; since there is no knowing what turn a case may take, converting that which was originally simple, into one of complication and difficulty. Take care to apprize your client, in the presence of some one who may be able afterward to establish the fact, if it should be denied, that you intend to conduct his

case yourself, before the arbitrator. For want of this precaution, cases have occurred in which clients have shamefully turned round upon their attorneys, on an adverse issue of the case, and vehemently complained of their having usurped the functions of counsel, and so contributed to the failure! This is the more necessary to be borne in mind, when you undertake to conduct your client's case *against counsel*. Consider well before you do so; and if you decide upon it, give your client full notice of your intention, and of your reason—viz., to save the costs of employing counsel—and have your client's consent to your doing so. For my own part, I have seen attorneys conduct cases before arbitrators, against counsel, with great ability, and successfully; but I have also seen them ludicrously overmatched in the conduct of the cause, and their client suffering accordingly. Anticipate the possibility of a very mortifying event occurring—namely, that your client may, rightfully or wrongfully, deem you to have undertaken what proved too much for you; or you may yourself feel overmatched by your opponent, and, in either case, have to appear, on the ensuing occasion, with counsel. I have known several, I might say indeed many, such cases; and it is with a sincere wish to guard you against rashly running risk, that I am thus plain in my language. Having, however, resolved upon yourself conducting your client's case, bear in mind, to stimulate yourself into promptness and energy, how rapidly costs are accumulating. As soon as you have heard your opponent's case, sincerely and earnestly strive to come to an amicable understanding, at the very first meeting,

if practicable. Remembering the burthen which you will be laying on your respective clients, by undue pertinacity, come at once to the real points of your case; stating frankly what you are prepared to admit, and what you are compelled to dispute, and this in a conscientious and gentlemanly spirit. If your opponent do the same, your labor will be lightened and made pleasant; if he do not, depend upon it, the contrast will *tell* upon the arbitrator. Do not open your case, when you are plaintiff, with undue minuteness, but be content with a brief and general outline of what you expect to be able to prove. When you are for the defendant, I am disposed, after some experience in these matters, to recommend you to call your witnesses before you make your statement. The advantages of doing this will be, that you avoid the risk of arguing on facts which your evidence may either fall short of establishing, or negative. By taking the course which I suggest, you will go on sure ground, and deprive your adversary of, it may be, strong topics for his reply.

In examining, and cross-examining, exercise deliberate reflection upon every question which you put. Frame your question distinctly in your mind, and consider its bearing, before you put it to the witness. Make it as short and direct as possible, and a proper legal question—not a leading one, *i. e.*, one calculated to *suggest the answer*. Avoid repetition. When a fact is once distinctly proved, even by a single answer, and appears on the arbitrator's notes, leave it there, and do not load his book with idle variations, which may operate to your client's disadvantage,

when the arbitrator comes to review his notes of th evidence, in order to decide the question. Eschew irrelevancy, also. Keep to the point—the true point, or points, of inquiry. To enable you to do this, however, you must have formed a clear conception of your case, before you enter on it, in the arbitrator's room. Keep your eye constantly on a short analysis of the issues, if there be any formally raised; if not, on a brief epitome of what you consider to be the true points of the dispute. This will enable you to avoid floundering about in twattling prolixity, which would injure your character as a man of business, and expose you to the censure and contempt of your judge and opponent. It will also aid in preventing that frightful accumulation of costs, peculiarly incident to ill-conducted arbitrations, which swell into a magnitude utterly disproportionate to the interests originally involved in the reference, and at length constitute the only real object of contest! All practical, experienced members of both branches of the profession, will corroborate what I am saying.

I shall quit this subject with one recommendation, to which I earnestly call your attention, for it is the result of much observation, and of a painful conviction of the necessity which exists for doing so. Do not let your client be present at the arbitration, if you expect a keen conflict of evidence, unless he be a person on whose integrity of character you can rely. This is especially necessary, if there be any probability that the arbitrator will allow him to appear as a witness. But even if he should not, still it is to be borne in mind that an unconscientious client may, on perceiving the pinch and strain of his

case, and that it is damaged by some evidence adduced by his opponent, resort to undue means of rebutting it by, in short, false, or, at least, strongly biased evidence. This is an evil incident to the system of references. I have seen lamentable instances of it, and on that account most solemnly put you upon your guard.

Having dwelt so long on the subject of your attending arbitrators in the capacity of advocates, I would suggest to you younger members of the profession the propriety of bestowing due pains upon the acquisition of an invaluable art—that of public speaking. A respectable attorney is called upon to exercise it on many more occasions than those to which I have been alluding, and those, too, more public. It should be deemed by him a part of his professional education, to acquire the power of expressing himself in public readily, clearly, neatly, and with self-possession. If he be unable to do this, he will cut a very sorry figure on many occasions when it is of great importance for him to have made a creditable appearance—before magistrates, coroners, county court judges, sheriffs, under-sheriffs, arbitrators—on political occasions when professionally engaged; in vestry, and at other meetings, when it may be his duty to advise, or he may have the opportunity of defending or assailing, on behalf of his clients, measures brought forward by which they consider themselves likely to be injured. For all these, and similar occasions, an attorney of superior education and pretensions should have duly qualified himself beforehand; and I know no other mode of doing this effectually than by a judicious attendance

on debating societies; not to acquire habits of frothy and flippant declamation, which will assuredly expose its possessor to scalding ridicule, but of manly self-possession—of plain, connected, business-like expression of ideas. To state a case, to sum up evidence, with neatness and perspicacity, should be regarded by you, by us, indeed by any one, as an object worthy of almost any amount of exertion. Practice alone can make perfect in this matter, as in others; but an early *and judicious attendance at a well-conducted* debating society, I have no hesitation whatever in strongly recommending. What other mode, indeed, is there of making a beginning.

Having mentioned the county courts as one of the scenes of action affording you an opportunity of exercising your powers of public speaking, I would add a word or two upon that subject. The statute* founding those tribunals reserves to us and to you the power, if we be so disposed, of appearing to conduct a client's case, with the leave of the judge. This leave would, I think, be rarely refused by the judges, in any case in which it was likely to be asked; for they entertain a just anxiety to see the interests of the humblest suitors intrusted to the keeping of honorable, experienced, and properly edccated and responsible legal practitioners. It is true that the fees are too small to render attendance in these courts frequent among the bar, but it is far otherwise with you. I know of two or three instances in which young, respectable, and clever attorneys have realized sums for one day's attendance at a county court which would surprise you; and in hon-

* 9 & 10 Vict., c. 95.

orably earning that remuneration, they have really served the cause of justice. I recommend you by no means to desert this apparently inferior scene of action, thereby depriving your humble fellow-subjects of the opportunity of obtaining sound legal advice, and leaving them a prey to the *plague of lice*—of those noxious vermin who would soon infest those regions, if not kept in check by persons like yourselves. I would remind you, also, that as nice and difficult questions of law and fact may be involved in these petty disputes as can arise in causes of the greatest magnitude elsewhere; and the judges, being lawyers themselves, and generally, too, experienced lawyers, are aware of the importance of adhering to legal principles in adjudicating upon the rights submitted to them. Consider what questions may not arise in Interpleader Cases (§ 118), Replevin (§ 119), Actions of Tort, and the various kinds of contract to which the jurisdiction of these judges extends—questions which they themselves would decide, or direct a jury to decide, in conformity with the same principles which would regulate the adjudications of the superior courts. What an opportunity is thus afforded you of acquiring sound and ready legal knowledge, and advantageously exhibiting it! I was present, only a few weeks ago, in a county court not far distant from the spot where we are assembled, presided over by a counsel of high station and great experience, and who had to decide an interpleader case, after full argument, in which most of the leading cases on the subject were examined; and a very satisfactory and elaborate judgment he gave. The amount in dispute, in that particular

case, was not more than £17, but the facts were almost as difficult to deal with as those of any case of the kind which I have seen brought forward in the superior courts. In addition to this, that in question virtually decided five or six others dependent upon it, obviously rendering a just decision a matter of great importance to the parties. Now bear this in mind, when this humbler class of cases shall be offered to you, and do not turn aside from them as unworthy of your attention, in respect of either the style of business or rate of remuneration. Even were you to be influenced by no other considerations, do not forget that business of this kind may form the basis of an extensive connection, and lead, in due time, to a higher class of practice. Never throw away a fair opportunity.

Be as *prompt* in answering letters as you should be *considerate* in determining what not to say, what to say, and how to say it. Imagine your client looking over your shoulder, with anxious scrutiny, at what you are doing on his account. What would he say if he saw you negligent and procrastinating, or rash and inconsiderate? On the former point, any man of business, in any department of life, will quickly tell you that you have not the slightest pretensions to that character, if you postpone answering a letter one single hour, unnecessarily. In Mr Maugham's Articled Clerks' Manual,* you will find the following passage, which made a strong impression on my mind, when first I read it some time ago:—"A professional man, of no very distinguished talents or attainments, who has amassed a large

* Page 208.

fortune" [upward of £250,000, as I have ascertained] "by practice, ascribes his success *mainly to his immediate attention to all the letters which he received.*" I can easily believe it. I have heard similar remarks often made by persons entitled to speak on the subject with authority. For my own part, I would on no account intrust with the management of any affairs of mine, attorneys and solicitors in the habit of letting their correspondence fall into arrear. It is quite unpardonable; most slovenly, unbusiness-like, and mischievous; and affords a true exponent of unfitness for active professional life. The correspondence in which you are engaged generally relates to transactions of urgency, in which advantages may be gained, or lost, by your clients, accordingly as you exhibit promptness or delay. Property in dispute may suddenly rise, or fall, in value; debtors may become insolvent, and not worth further pursuit; a favorable inclination on the part of those with whom you are negotiating may disappear, if not quickly taken advantage of, and even be converted into resentment, and obstinate opposition. Great opportunities may be lost forever. All this, I say, may be effected by means of an hour or two's indolence and procrastination on your part. When you are tempted, therefore, to indulge in this humor, remember your OATH, and be instantly up and doing.

Maintain inviolate the secrets intrusted to you in your professional capacity. You must not betray them on any pretense—on any provocation whatever. To be *thought* capable of doing so, would quickly end in your ruin; whether springing from

mere heedlessness and volubility, or an intentional breach of confidence. The ingratitude, however cruel, of a client, is, I repeat, no justification whatever of such unfaithfulness, on your part, to your sworn trust. And as to heedlessness, cultivate its opposite: cherish a humor of cautious reserve: be ever on your guard. Observe your experienced seniors, and imitate their discreet silence, whenever topics are touched upon which may, though never so remotely, affect the interests intrusted to their keeping. To such persons you may apply the homely saying, "*Catch a weasel asleep!*" These observations are peculiarly applicable to family secrets, often of an exquisitely delicate and painful nature, and necessarily intrusted to you, when called upon to interfere professionally in such matters. What misery and terror would be excited in the minds of your confiding clients, if they had the least suspicion of your imprudence, or treachery! These are pre-eminently the occasions on which, by your delicate appreciation of character, your nice sense of honor, your firmness, tact, and vigilance, you may act the part of, I might almost say, a guardian angel: but the indispensable conditions are, impenetrable secrecy, inviolable confidence. Yet are you sometimes placed in such difficult circumstances, that the finest discretion may be foiled: when, for instance, you have been consulted by more than one party to a transaction of the kind which I am mentioning—when the acts, intentions, and wishes of each are known to you—and yet you are driven, at length, from the course of events, to make your election whose solicitor you will continue; it having

become impossible for you to afford your former amicable services as a mediator, or common friend. What are you then to do? Will you select A. or B.—having thenceforth to act *against* one of them, whose secrets, nevertheless, you became possessed of in the character of his, or her, confidential adviser? Each of the parties is now hopelessly exasperated against the other—and hostile proceedings are inevitable. The course to be taken, in such a case, and on similar occasions, must depend upon circumstances, and your own sense of honor and delicacy; which may prompt you to decline further interference, professionally, for either party. I knew a case some time ago, of the description which I have been indicating, in which an estrangement between relations was suddenly kindled into an extraordinary intensity of fury and hatred, as is but too often the case, when once a spark of animosity exists among relations. In this instance, however, the attorney whom the three parties had consulted, knowingly to each other, on finding that he had arrived at the point where he could not, without compromising his own feelings of strict propriety and honor, act hostilely against any of those who had consulted him, wrote to each of them, announcing his determination to withdraw altogether, and desiring them forthwith to consult other advisers. His firm adherence to this resolution had the effect of bringing his heated clients to their senses; and he had, ere long, the great satisfaction of bringing about a reconciliation, through the exercise of peculiar talents for negotiation. I need not, however, pursue these observations further. Your own cultivated

sense of honor will enable you to act conformably with it on all occasions, and prevent your ever being exposed to the pain and humiliation of being restrained only by the public interference of the court, from acting against one whose secrets you had become acquainted with in your professional capacity. There is at all times, I understand, a sort of domestic forum existing within the walls of this institution—I mean the council, to which questions of professional delicacy and difficulty, arising between members of the society, may be submitted, for the disinterested opinions of gentlemen of the greatest eminence and experience in your branch of the profession, as to the course of procedure proper to be adopted by the applicant.

Never permit yourselves to utter a disparaging observation concerning your brethren, before laymen, especially before those who are, or have been, clients of such brethren. Stand by one another! If you can not approve, do not censure, at all events gratuitously, or wantonly: for if you should be professionally consulted by one who complains that he has been injured by the negligence or misconduct of his attorney or solicitor, it is your bounden duty to act with as much zeal and determination on behalf of your client, as if he had engaged you to act against a lay stranger. As far, however, as you conscientiously can, make your erring brother's case your own; acting in the full spirit of a trite but beautiful verse—

"Teach me to feel another's woe,
To hide the fault I see:
That mercy I to others show,
That mercy show to me!"

Ask yourselves the question—"how should I wish him to act toward me, were he and I to change places?" If his blunder or misconduct have occasioned real injury to your client, you must unquestionably insist on full and fair redress: but be as gentle and considerate as possible, in the mode of doing so. Avoid exposing the affair to the profession, or the public, unless the foolish obstinacy of your opponent should compel you to do so. Remember that it may one day be your own turn; you may make a slip yourself; and would wish to find yourself in the hands of a considerate *gentleman*.

Never speak, in society, sneeringly or disrespectfully of any of your brethren, whose professional conduct and character may be canvassed in your presence. Do not utter a word against him, except, perhaps, in some gross and notorious case, but preserve a dignified silence, a charitable forbearance; remembering how large a deduction ought, perhaps, to be made, in favor of the absent person, on account of exaggeration or misapprehension. A word of yours, inconsiderately or ungenerously spoken, may help to deprive of bread some professional brother, who is really being shamefully misrepresented—who is an honorable man, and would on no account have done toward you, or any one else, that which you are doing toward him. I have heard of a case in which a respectable young attorney lost a promising mercantile connection, precisely in the way which I have been speaking of. He never knew the reason why; but it was really owing to a casual remark concerning him, made one day after dinner, by an honorable but hasty member of your branch of the

profession, not at all aware of the cruel effect of his words—that one of the guests at the table was on the point of becoming a client of the gentleman whose competency was being so unwarrantably impugned.

Regard fees due to counsel as a *debt of honor*, the payment of which is a matter of peculiarly stringent obligation among gentlemen. Counsel have no means of compelling the performance of that duty, if once they have taken the brief, in reliance on your afterward paying the fee, which, in point of strictness, ought always to be paid with the brief; and many eminent attorneys and solicitors still adhere rigidly to this rule. As a matter of convenience to both parties, I see no substantial objection to allowing fees to remain over, for *short* intervals of periodical settlement. In such an assembly as this, however, I need not dwell on such a topic. I might not indeed have touched it at all, had I not been urged to do so, by one or two of your most distinguished seniors; who, nevertheless, I believe to be not one whit more zealous for the honor of the profession, than those by whom I am now surrounded, as is testified by those loud expressions of approbation with which you have just received my allusions to so delicate a matter.

Gentlemen, let me take this opportunity of correcting an erroneous impression among some members of your branch of the profession, that the name of "Solicitor" is their most honorable designation—a title preferable to that of "Attorney." It is certainly not so; and the late Lord Tenterden took the trouble several times of refuting such a notion, and

stigmatized as absurd the conduct of those, who called by the name of *Solicitors*, persons conducting proceedings in courts of *law*. The proper expressions are "Attorney at Law," and "Solicitor in Equity." There is no difference whatever between the two, in respect of rank, or *status*—any more than there is between barristers practicing respectively in courts of law and equity. If there be any preference, I should have thought that it would lean toward the good old Saxon word *attorney*—indicating an office most honorable and ancient. The word "solicitor" is, comparatively speaking, of much more recent introduction—an off-shoot from the under-clerks of the now abolished Six Clerks in the Court of Chancery.* Which is higher in rank—her Majesty's "*Attorney*" General, or "*Solicitor*" General? And yet, though all this be incontestably true, it is almost getting fashionable to drop the elder title, and adopt the modern new-fangled one—thereby causing it to be supposed, that the persons doing so, have no right to practice in the courts of law, but are confined to courts of equity! Believe

* A.D. 1842, by Stat. 5 & 6 Vict., c. 103, s. 1.—In the early history of the Court of Chancery, the Six Clerks, and their under-clerks, appear to have acted as the attorneys of the suitors. As business increased, these under-clerks became a distinct body, and were recognized by the court under the denomination of "sworn clerks," or "clerks in court." The advance of commerce, with its consequent accession of wealth, so multiplied the subjects requiring the judgment of a court of equity, that the limits of a public office were found wholly inadequate to supply a sufficient number of officers to conduct the business of the suitors. Hence originated the "solicitors" of the Court of Chancery.—See 1 *Smith's Chancery Practice*, p. 62. (3d ed.)

me, gentlemen, the word "attorney" is an honorable, a right honorable, old English word, and I hope it will not be lightly parted with by those who have a right to the title. When you have to address one another, therefore, let it be thus, as the case may be:—"A. B., Esq., Attorney at Law,"—or "A. B., Esq., Attorney and Solicitor"—but not "A. B., Esq., Solicitor," except possibly when you are corresponding with him solely on chancery matters, and you think it may please him to be so addressed! At all events, never use the word "solicitor" either in writing, or verbally, with reference to proceedings *at law;* or you will justly incur the censure expressed by Lord Tenterden. Be assured that the word "solicitor" conveys to no class of society a higher notion of your position or functions, than the word "attorney;" and it is difficult to conceive how any one ever came to think otherwise. I have once or twice heard laymen ask puzzling questions of those who dropped the title "attorney" in favor of that of "solicitor:" whether the gentlemen in question had a right to both titles, and if so, why they preferred being called by one of them only.*

Your clients are entitled to your best *personal*

* These observations are not applicable to Scotland, where there is no such class of practitioners as "attorneys." There, "law agent" or "solicitor" answers to our "attorney at law." The office of "attorney," in Scotland, is merely private, and conferred by letter of attorney, regulating the nature and extent of the powers thereby delegated. There the term "solicitor at *law*" is used, and with sufficient propriety; but I have seen it adopted in England to designate English practitioners, most erroneously.

exertions on their behalf. You are bound to look, yourself, and that patiently and thoroughly, into the affairs on which they consult you—however troublesome and comparatively thankless the task: thankless, I mean, because of your trouble being, as it frequently is, and must be, inadequately recompensed. You have undertaken the duty, and must go through with it heartily; never devolving on subordinates, or others, that which the law exacts from yourselves. An indolent, capricious humor, may easily betray you into inextricable difficulties, and alarming liabilities. Apply, therefore, your minds closely to the transaction, as though your own interests were concerned. Do not precipitately act upon your client's *statements* as to such and such being *facts*, but ascertain for yourselves whether they *be* facts. It is your bounden duty to do so—and it will not afterward avail you as a defense, when your professional conduct is challenged by a disappointed client, that you had relied on his statements, if you had the means of ascertaining the correctness of them, but neglected to do so. It will, when challenged, be for you to prove your searches—your inquiries—that you went to this person, wrote to that—and were duly in attendance, at the proper time and place. How intolerably mortifying for you to have your duties delineated, with cruel precision, by the judge *summing up against you*, in an action for negligence brought by your client, or by yourself, against him for your bill—but unsuccessfully! See, in *Wilson* v. *Tucker*, 3 Stark. N. P. Rep., 154, the consequence of an attorney's acting on his own client's representation concerning a fact. That client

had furnished him with an official extract from a will at Doctors' Commons, for the purpose of the client's advancing a sum of money on the security of a legacy bequeathed, in the will, to the borrower. The attorney, relying on the extract with which his client had furnished him, completed the transaction; counsel preparing the requisite instrument. But it turned out that in the original will there was a clause which did not appear in the extract, brought to the attorney by his client—such clause rendering the security utterly worthless! On this the client turned round on his attorney, sued him for negligence, and recovered from him every farthing of the money (£210) which the client had advanced on the faulty security! Hear what Lord Tenterden told the jury: "The complaint is that the attorney did not go to Doctors' Commons, and examine the will itself. I am of opinion that by law, it is the duty of an attorney not to content himself with a partial extract from a will, *unless* something pass between himself and his client, which shows that it is unnecessary to consult the original." There was contradictory evidence given here, the plaintiff's witness saying that the client had requested his attorney to take all pains, and examine the will; the defendant's witness, on the other hand, stating that the client had told his attorney, that the former had made all requisite inquiries as to the sufficiency of the security—and requested his attorney merely to prepare the deed and complete the transaction. The plaintiff's witnesses, however, were believed—and he succeeded. Is not this an instructive case? Would that attorney ever again be guilty of this

slip-shod mode of doing business? Assuredly not; and take care yourselves never to be so!

I repeat, then, as a general rule—never rest satisfied with, nor act upon, the mere representations of clients, where you have the means of ascertaining how the facts themselves really stand. And, above all, eschew a tendency to superficial and slovenly habits of business: ever remembering that you have not only your own client hereafter to call in question your conduct and motives, but also an *opponent* to deal with, whose duty and interest it is rigorously to scan the propriety of your acts.

In all matters relating to conveyancing—to the transfer of real property—Sir Edward Sugden's "Vendors and Purchasers" will be found a work of inestimable value to the practitioner, abounding in fruitful suggestions, important to all concerned in the practice of the profession, but especially to yourselves. There is not a page in the book which does not challenge your anxious and repeated perusal, till you shall have become familiar with its contents; that is, if you wish to be able to conduct this vast section of your professional business with comfort to yourselves, with safety and advantage to your clients, and to acquire, rightfully, the reputation of a skillful practitioner. Take as a sample of the practically instructive character of the work the first three sections of chapter ix.—(1) Of the mode in which an abstract of title should be *prepared* and *examined;* (2) The way in which it should be *perused;* (3) Of comparing the abstract with the documents. There appears to me nothing here which even the younger class of clerks can not appreciate; and it will strong-

ly illustrate the vigilant circumspection which is requisite to deal safely and efficiently with this kind of business. Example being better than precept, let me call your attention to the case of *Ireson* v. *Pearman, Gent.*, 3 Barn. & Cress. 799, in which a client sued his attorney for negligence, and recovered from him a verdict of £600 damages. The negligence consisted in this, that, acting for the vendee, he had thought it unnecessary—probably being desirous of saving his client expense—to send to counsel either the entire abstract of title, extending to sixty-five brief-sheets, which had been forwarded by the vendor's attorney, or the other documents accompanying it. Instead of this, he took upon himself to frame a short case for Mr. Preston's opinion, alleging erroneously, that a certain person named in the conveyance, *was seised in fee* of the premises; and Mr. Preston was compelled to state, in court, that he should not have given the opinion which he had given, if his client had laid before him the deeds, or abstracts of them, which had been furnished to his client by the vendor's attorney. The late Chief Justice Tindal, then (A.D. 1825) at the bar, argued the case very learnedly for his client, urging that he had not been guilty of *crassa negligentia*, but had, with reasonable care, given the best opinion he could, and ought not to be held answerable for an error in judgment. All, however, was in vain. After protracted litigation, the court deliberately confirmed the verdict for the plaintiff, casting the unfortunate defendant in £600—the costs possibly swelling that sum into £1000. Mr. Justice Bayley, in delivering the judgment of the court,

after time taken to consider, thus expressed himself: "Although it may not be part of the duty of an attorney, to know the legal operation of conveyances, yet it is his duty to take care not to draw wrong conclusions from the deeds laid before him, but to state the deeds to the counsel whom he consults, *or he must draw conclusions at his peril.* It therefore appears to me, that in omitting these deeds, and erroneously describing Malin as tenant in fee, there was negligence in the defendant." This case also affords a striking confirmation of the truth of a remark which I made in a former lecture,* concerning the danger of your assuming the functions of counsel.

You will observe, gentlemen, that I have said, throughout these lectures, but little on the subject of equity practice, and for an obvious reason: it would ill become a practitioner in the common law courts, to presume to offer practical suggestions, on a subject with which he can not be supposed to be practically familiar. What little I know on the subject, you may, if so disposed, find in the ninth chapter of my "Law Studies," where I have attempted an outline, at once practical and elementary, of those leading doctrines of equity, which no lawyer, worthy of the name, ought to be unacquainted with. It may possibly serve to counteract the pernicious tendency to regard law and equity as separate and distinct systems. They are, on the contrary, intimately and indissolubly connected; and through ignorance of this fact, I am persuaded that both legal and equitable proceedings are much oftener

* Sup. pp. 129, 30.

erroneously, and more disadvantageously, instituted, than is generally supposed. I shall, however, content myself with one general observation on this subject. When important and complicated interests are concerned, and litigation is inevitable, consider well whether you should institute proceedings in equity, or at law. I strongly recommend you to lay cases, simultaneously, before an experienced member of each bar; and, if necessary, to have afterward a consultation between them. This course was recently taken, in a matter of great pecuniary importance, and with the happiest effect. By comparing the views of able practitioners in the two departments, you may secure the advantages, and escape the disadvantages, of both, or either, instead of first committing yourselves, and having then to retrace your steps, after having incurred serious expense and delay.

Be exceedingly cautious how you permit, or advise, clients to institute criminal proceedings against those with whom they are at variance, or to deprive them of their liberty. Look *you* steadily onward through the mist of prejudice or passion with which your client approaches you, and contemplate the probable, perhaps inevitable, consequences of precipitation in such a matter. It is a very serious thing to attach to a fellow-subject, whose character is as valuable to him as your own to yourselves or your clients, the stigma of a criminal charge. When your headstrong client is advising you to indict for felony, or for perjury, or any other misdemeanor, endeavor coolly to consider the thing *done*—done, too, erroneously; and an action for malicious prose-

cution, or arrest, brought against you or your clients, and heavy damages claimed. Pause, and see what evidence you will have to defend yourselves against such charges! Remember how jealous we, in this free country, are of our liberties; and how sternly the judges vindicate those liberties whenever they are rashly and unjustly assailed; and that it is within *their* province to decide whether there was, or was not, probable cause for the arrest or prosecution.* The duty of the jury is to decide, only, whether those facts exist, from which the judges deduce their conclusions: and in doing this, the jury must inquire very deeply into the *motives* and *intentions* influencing the parties at the time.† And this being so, anticipate this searching scrutiny, and consider well whether you, or your client's case, will be able to bear it: to satisfy the jury that you acted, not from vindictiveness, nor from any other sinister motive, nor with precipitation, but *bonâ fide*, with honest and just intentions, and proper motives. And observe, that all this will have to be established by evidence, in open court. Shall you be able to provide that evidence? By what witnesses? By what documents? Here let me call your attention to a great safeguard which you may throw around yourselves and clients, viz., by taking counsel's opinion before you make the decisive move. But observe —it will, after all, be put to the jury, whether you or your client acted *bonâ fide* on counsel's opinion,

* *Panton* v. *Williams*, 2 Q. B. 169; *Michell* v. *Williams*, 11 Mee. & W. 205.

† See the cases last cited, and also *Taylor* v. *Williams*, 2 B. & Adol. 845.

or obtained it as a mere *cloak of maliciousness!* The late Mr. Justice Bayley thus cautiously expressed himself on this subject in the case of *Ravenga* v. *Mackintosh*, 2 B. & C. 697:—"I accede to the proposition, that if a person *lay all the facts* of his case *fairly* before counsel, and act *bonâ fide* upon the opinion given by that counsel (however erroneous that opinion may be) he is not liable to an action of this description;" viz., for malicious prosecution, or arrest. To make, therefore, counsel's opinion worth having, be perfectly candid in the case which you submit, remembering that it may come hereafter before a judge and jury; and if it should appear that you must have known, or ought to have known, facts which are not stated in the case—or that you have unfairly stated them—the opinion so obtained will not only do you or your client no good, but very great harm, as affording strong grounds for inferring premeditation. The recent case of *Gibbons* v. *Alison*, 3 Com. Bench, 181, may serve to illustrate what I am saying, and also the necessity of caution and candor in framing the affidavits on which you apply to a judge for a Capias under statute 1 & 2 Vic., c. 110, § 3. How would you have liked to hear Lord Chief Justice Tindal charging *you*, as the framer of such an affidavit, with, "an evident *suppressio veri?*" saying, also, that, "if the facts had been correctly represented to the judge, he would not have made the order for the arrest?" Let me add, before quitting this topic, that in taking an opinion, as above suggested, I advise you to lay your case before a counsel experienced at Nisi Prius, who is familiar with the course of causes of this descrip-

tion, when brought into court, and will give you a safe, practical opinion, founded upon that experience.

Beware how you mingle your clients' money with your own, at your bankers: for if those bankers should fail, you will have to make good the loss to your clients. Of this the case of *Robinson* v. *Ward*, Ryan & Moody, 274, is a miserable example: for there the attorney, a gentlemen of the highest respectability and honor, had to make good to his client no less a sum than £5300! Lord Tenterden lamented the hardship of the case, but applied the rule of law firmly. That misfortune arose out of Fauntleroy's forgeries. The sum in question, being the produce of the sale of an estate belonging to the defendant's client, was deemed, by the former, too large a sum to be kept in his own house, He therefore paid the whole, in the identical notes which he had received from the purchaser of the estate, into the bank of Marsh and Company, in which Fauntleroy was a partner; but he paid it in, together with £116 9*s*. 11*d*. of his own, to his *own private account*. Three weeks afterward the bank stopped, with £1600 of the attorney's own money, beyond his client's £5300; and the unfortunate attorney, "upon whose conduct," said Lord Tenterden, "not the slightest suspicion could rest," had to make good to his client the whole sum of £5300! The following language of Lord Tenterden, on that occasion, is well worthy of your attention, for your own practical guidance:—

"There are three modes which a person, circumstanced as the defendant, may adopt. *First*, he

may keep the money in his own house. As to the consequences of robbery by force, in such a case I express no opinion; but we are all aware of the consequences of a private theft.* *Secondly*, he may pay the money in to his banker, in his own name, to be placed to his own credit. *Thirdly*, he may pay it in his own name, and, at the same time, open a separate account, which would specify on what account the money was paid. Thus, if, in the present instance, the money had been paid into the house of Marsh and Co., in the defendant's name, but, *on account of Mr. Robinson's estate*—this, in the words of Lord Hardwicke, would have 'earmarked it;' and the money, in case of the death of the defendant, would have been forthcoming. But if a person mixes up money which he has thus received on account of a third person, *with his own*, he makes himself debtor to the estate out of which the money arose."

And thus Mr. Ward had to pay to his client £5300, besides all the costs of the action, and losing, also, upward of £1600 of his own money! There are other reasons why it is inexpedient for you to intermingle your own and your clients' money, and why you ought to act on the suggestion of Lord Tenterden. You ought to have two distinct accounts with your banker; one, your own private account; the other, you might style your "professional account," or "trust account," specifying always the name of the client whose money you pay in; but, at all events, in some way or other, keep

* See, on this point, the useful note of the Reporters, p. 276, note (*a*).

your own and your clients' money perfectly distinct and separate from each other.

It is your sacred duty, gentlemen, to have your affairs, which are, in fact, those *of others*, confidentially committed to you, always in such good order —so well arranged—that, in the event of sudden illness, accident, or death, overtaking you, your clients shall be subject to no delay, injury, or inconvenience, and have no reason to repent having placed themselves and their affairs in your hands, but will, on the contrary, ever respect your memory as that of a conscientious and exemplary professional man, And let me entreat you never once to yield to any feeling of disinclination, or fear to *look into your affairs*. The instant that such fear or disinclination exists, it shows "something rotten" in those affairs—that they are in an unsound state; and the sooner that such unsoundness is thoroughly probed, the better. Delays, here, are dangerous indeed!

The law is exquisitely and sternly sensitive concerning the good faith to be observed, in reference to matters of property, by so intimate and confidential an agent as an attorney and solicitor; watching every such transaction between him and his principal, with extraordinary jealousy, and surrounding the latter with every safeguard that can be devised against even the chance of abusing confidence. It exacts from the attorney and solicitor *uberrima fides* —that is, the highest possible degree of good faith. Mr. Justice Story* has some excellent observations on this subject. "It is obvious," he says, "that

* 1 Equity Jurisp., § 311.

the relation of a client, and his attorney, or solicitor, must give rise to great confidence between the parties, and to very strong influence over the actions, and rights, and interests of the client. The situation of an attorney, or solicitor, puts it in his power to avail himself not only of the necessities of his client, but of his good-nature, liberality, and credulity, to obtain undue advantages, bargains, and gratuities. Hence the law, with a wise providence, not only watches over all the transactions of parties in this predicament, but often interposes to declare transactions void, which, between other persons, would be held unobjectionable. It does not so much consider the bearing or hardship of its doctrine, upon particular cases, as the importance of preventing a general public mischief, which may be brought about by means secret and inaccessible to judicial scrutiny, from the dangerous influence arising from the confidential relation of the parties. By establishing the principle, that, while the relation of client and attorney subsists in its full vigor, the latter shall derive no benefit to himself from the contracts, or bounty, or other negotiations of the former, it supersedes the necessity of any inquiry into the particular means, extent, and routine of influence, in a given case—a task often difficult and ill supported by evidence which can be drawn from satisfactory sources." You will find this subject well discussed by Lord Brougham, in the case of *Hunter* v. *Atkins*, 3 Mylne & Keen, 11. I would also refer you to two highly important and instructive judgments, respectively of Lord Eldon, in *Bulkeley* v. *Wilford*, 2 C. & Fin. 102, and of Lord

Cottenham, in *De Montmorency* v. *Devereux*, 7 C. & Fin. 188, both decided by the House of Lords. Frequent meditation on these principles, will tend to engender in you a habit of scrupulous and fastidious nicety and delicacy, in respect of all dealings concerning property, between you and your clients. It will also serve to guard you against inadvertencies which, though perfectly innocent, may yet entail upon you suspicion, vexation, and loss.

Gentlemen, do not *make haste to be rich*. Perfectly true is the old saying, "soon ripe, soon rotten." Besides, the efforts *thus* to become rich, have a natural tendency to impair a fine sense of honor and integrity. You may soon slip into an eager, selfish, money-making humor, disposed to render tributary every body and any thing that comes in contact with you, and become unscrupulous about the means resorted to for attaining unholy ends.

Eschew speculation. Who would knowingly intrust his property to a speculating attorney or solicitor, any more than to a speculating banker? If you speculate openly, the firmest connection will quickly melt away from you; if you do so secretly, will it not be also guiltily? Assuredly—and the evil day may overtake you far sooner than you could have imagined.

Gentlemen, I observed in my first lecture,* that there is one very solemn responsibility cast upon you by your profession—in respect of your client's "intrusting his conscience to you," on very many occasions; and I said that I should revert to the topic. I do so now, but shall be brief, though I

* *Ante*, p. 42.

feel strongly upon the subject, believing it to be one of paramount importance.

You are, indeed, often intrusted with our consciences—you yourselves, our own sworn advisers, to you we give the charge of our consciences; and a delicate, if not perilous trust it is, in the eye of a conscientious practitioner, aware of his relations toward his fellow-creatures and the Almighty God.

Gentlemen, our rights and interests never seem so dear and valuable to us, as when they are questioned or denied; and he who does so, very quickly and easily becomes our enemy, whom we would strain every nerve to defeat. Those interests and rights it is often in our power, and through your intervention, to serve and secure by our own oaths. Those oaths we take by your assistance; the terms of them are frequently framed by you. Take care of us, gentlemen—take care of us, and help us to take care of ourselves, on these critical and dangerous occasions; for human nature is very weak, temptation often fearfully strong, and, as far as this world is concerned, impunity is often complete. Let me venture to propose to you a cardinal rule, to be acted upon by you uniformly, in discharging this portion of your duties. When we are to depose in our own behalves, either *vivâ voce*, or in affidavits, answers in chancery, and otherwise, extract from us our own true knowledge and belief as to past facts, belief, or intentions, *before you permit us to see what it is our interest* to represent them to have been. Use all your sagacity in doing this. If, after your client has discovered where his interest lies, he should appear disposed to vary his statement

or recollection accordingly, be firm—if need be, indignantly firm, and inflexible, telling him that you will not permit him to perjure himself; that if you did, your own guilt would be greater even than his. Oh, that you would let this momentous subject have the consideration which it demands! It would give a very grave complexion to a large portion of your professional duties—to all those which the judicial system at present requires to be transacted through the intervention of an oath.

Desiring to speak with the greatest possible diffidence, I nevertheless can not help expressing a fear, that an oath is required far too frequently, and on utterly inadequate occasions, in the conduct of legal business; to an extent which is calculated to impair the sense of its awful character and incidents. Surely it is an act of tremendous significance, deliberately to invoke THE DEITY to witness, that what is said on a given occasion is the truth, the whole truth, and nothing but the truth. I have sometimes shuddered at witnessing the unconcern, and even levity, with which oaths are administered, and taken, so as almost to degenerate into mere irreverent form. In Scotland, the oath to witnesses is administered with a grand solemnity. The judge rises from his seat, and raising his right hand, requires the witness to do the same; and then, their hands remaining elevated, the witness repeats after the judge, the following words:

"I swear by Almighty God, and as I shall answer to God at the great day of judgment, that I will tell the truth, the whole truth, and nothing but the truth." What could be more calculated to sol-

emnize the mind, to search and quicken the conscience, than such an oath, so administered? It might be as well, perhaps, if such were to be the practice in our own courts. However this may be, I appeal to every one present, whether oaths are not at present taken on a vast number of the most trivial occasions that can occur in the course of ordinary business; administered hurriedly; taken without adequate reflection on the nature of the act; given, and taken, in fact, almost mechanically—the dread words, "So HELP YOU GOD!" pronounced trippingly on the tongue, while the lips touch the sacred volume with hasty, impatient action, the soul taking no part whatever in the matter! As if God had never uttered that awful command, *Thou shalt not take the name of the Lord thy God in vain; for the Lord will not hold him guiltless, that taketh His name in vain.* Gentlemen, if the public saw as much of these matters as you and I see, I think they would immediately urge upon our Christian legislature, further steps in the direction which it has lately taken; I mean, in enacting the statutes substituting declarations for oaths, on many occasions.* Why is it that our courts and judges, and

* Stats. 5 & 6 Will. IV., c. 62; 8 & 9 Vict. c. 48. The following is the "declaration" prescribed by the former act, to be taken in lieu of an oath, in all the cases there specified: "I, A. B., do solemnly and sincerely declare, that (&c., &c.). And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of an act made and passed in the — year of the reign of his present majesty, entitled, 'An act [*Here insert the title of this act*].'" By § 21, whoever shall willfully and corruptly make and subscribe any such declaration, knowing the same to be untrue in

often subordinate public officers, can receive, or act upon no statement—on even the most trivial occasions—unless God Almighty be first called upon to witness that the deponent is telling them the truth? Ought this to be tolerated? Why not take a hint from the heathen poet?—

"Nec Deus intersit, nisi dignus vindice nodus!"

God forbid, that, on occasions of adequate importance, a person should not be required to pledge his oath deliberately to the truth of his statement—to the sincerity of his belief and intention; but, in the

any material particular, shall be deemed guilty of a misdemeanor. The second of the acts here referred to was passed in the year 1845, and commences with the following recital: "Whereas it is highly desirable that oaths shall not be administered unnecessarily, by public authority, and there is reason to believe that the examination of a bankrupt, or of the wife of a bankrupt, before commissioners in bankruptcy, will be equally effectual for obtaining a disclosure of the truth, and a full discovery of all that can be useful, for the benefit of creditors, when such examination is conducted without oath." It then proceeds to prescribe the following forms of declaration (by § 2, annexing the penalties of perjury to the falsely making it): "I, A. B., the person declared a bankrupt under a fiat in bankruptcy [*or*, I, C. D., the wife of, *et cetera*], do solemnly promise and declare, that I will make true answer to all such questions as may be proposed to me, respecting all the property of the said A. B., and all dealings and transactions relating thereto; and will make a full and true disclosure of all that has been done with the said property, to the best of my knowledge, information, and belief. (*Signed*) A. B. [*or*, C. D., the wife of the said A. B.] In addition to the imposition of the penalty above mentioned, § 3 enables the commissioner to commit the party to prison for giving answers deemed, by such commissioner, "unsatisfactory."

name of all that is decorous and reverential, why should the same solemn ceremony be adopted, in order to obtain a *distringas!* to set aside petty proceedings for trumpery irregularities! to satisfy the court or a judge of the due service of rules and notices! that there is a good defense to an action on the merits! or, in an affidavit of increase, to satisfy the master of the truth of a paltry detail of pounds, shillings, and pence, paid to witnesses, in tavern expenses, and so forth! You know that I could occupy hours in enumerating the trifling occasions on which we audaciously venture thus to appeal to the Deity.

So long, however, as the law unhappily requires this to be done, it surely becomes you, who are principally concerned in these matters, either as deponents yourselves, or in causing your clerks, clients, and others to become deponents, to be most scrupulously conscientious; that if you *must* be thus incessantly rushing into the dread presence of the Almighty, in obedience to the laws of your country, you may at least have the consolation of reflecting that you have never done so rashly, or hastily, or falsely, or been in any way accessory to others incurring such fearful guilt.

There is still, gentlemen, another branch of your duties, the due discharge of which is a matter of immense importance to all classes of society. I allude to a subject at which I have already several times glanced in former lectures*—that of making, or advising us in making, our WILLS. What ability and integrity are requisite here, to enable you to ac-

* *Ante*, pp. 18–21, 114, *et seq.*

quit yourselves satisfactorily—even to avoid a breach of your sworn trust! I have, however, spoken already on this subject, and would refer you to what I have said; requesting your attention, bestowed in a serious and candid spirit, to what I have yet to offer.

I doubt whether, in the whole range of your duties there be one, the discharge of which is attended with greater anxiety and responsibility, than that which is often cast upon you—of determining on *the mental competency of a testator* to make a will.* Pray, bear in mind, when called to this exercise of your discretion, the ordeal through which you may afterward have to pass—the severe scrutiny to which your decision may be subjected in a court of justice. Let this reflection serve as an incentive to circumspection. Only consider what caution is requisite! Suppose, for instance, you should, in your conscience, believe your client incapable of making a will, while he, and those about him, think otherwise: what will you do? Suppose you should refuse to be concerned, and death intervene, followed by intestacy: even the medical attendant concurring with the relatives and attendants, in thinking that the testator was capable of making a will? Well, gentlemen, even in an extreme case like this, I conceive it to be your duty to act firmly in conformity with the dictates of your own conscience, and refuse to carry into effect what you believe to be only spurious wishes and intentions. If you should unfortunately have erred in your judgment, it will be an

* See some valuable suggestions on this subject in Williams on Executors, Vol. I., tit., "Of the capacity to make a will."

honest error, provided you really exerted your faculties to the utmost, in coming to your conclusion. You may be consoled by reflecting that the intestate's own negligence and procrastination conduced to the disappointment of his wishes, and the wishes and hopes of those whom he meant to benefit; and also devolved on you an unfair amount of responsibility, in determining, comparatively without assistance, so momentous a question as that of his capacity, or incapacity, to dispose of his property. He has yet cause to be thankful that *the law* is at hand to supply his omission! In a case of this description, you should be guided, to a great extent, by the opinion of the medical attendant, especially if he be a person of established character for ability, experience, and honor. Your own strongest impressions might well give way before his, on the maxim, *cuique suâ arte credendum.* Your diffidence should be great, in proportion to his confidence, in a matter so peculiarly within his province—so frequently the subject of his observation and experience. It is possible that a conscientious practitioner might, under such circumstances, be unwilling to incur the vast responsibility of refusing to carry into effect the wishes of his client and his family; and might, as it were, under protost, prepare the will, expressly warning those concerned, that if it should be questioned, he would declare his opinions openly in court, leaving a jury to decide whether the will was, under the circumstances, valid, or not. This, however, is obviously a suggestion requiring the greatest caution in acting upon it, as well to prevent cowardly mental compromises on the part of honorable but timid

practitioners, as to avoid affording a pretext and opportunity for innumerable and disastrous frauds, to the unscrupulous. It is difficult, if not impossible, to lay down a general rule on the subject, for each case must depend on its own circumstances. The responsibility, after all, rests with yourselves, of surrendering your conscientious judgment, or adhering to it with unjustifiable pertinacity. In such cases, I think I should be guided not a little by the nature of the will which it was proposed to make. If its provisions appeared reasonable, just, and suitable to the position of the testator and his family—in duly consulting the interests, for instance, of his wife, children, and near relations, or old and valued friends—that of itself would afford most cogent evidence that the testator possessed a true disposing mind. If, on the other hand, he proposed to make an unjust, a cruel, or capricious disposition of his property—disinheriting a child, or children, making no provision, or a grossly inadequate one, for a deserving wife—or alienating his property for absurd, unworthy, or disreputable purposes; I should be strongly disposed to let that circumstance turn the scale, and should refuse to be any party to framing an instrument which would act so unjustly, unreasonably, or tyrannically. Nay, I question whether I would give any assistance to a testator, however mentally sound, if so morally unsound; gravely pausing, at all events, before I gave irrevocable operation to death-bed caprices, prejudices, and antipathies. I knew a gentleman, a London attorney of eminence, and very high honor, who acted thus, on a particular occasion, and refused to make a

will, by which a client intended to disinherit his son. The testator lived to think better of it; expressed great thankfulness to the gentleman in question, for his firmness and high principle; and ultimately made a will in conformity with the dictates of nature and religion. To return, however, to your client's chamber: In cases of doubt, such as that above supposed, remembering the public scrutiny to which the transaction, and particularly your share in it, will be exposed, secure good evidence of the true state of things, by having some disinterested witness present—the medical man, the clergyman, if within call—some respectable neighbor or friend of the dying person—some one, in short, whose name will not appear in the will, otherwise, possibly, than as witnesses. Above all, use your utmost exertions to secure *efficient attesting witnesses*—persons of character, intelligence, and firmness—such as are not likely to be shaken by the most violent cross-examination to which they may be exposed by counsel engaged on behalf of persons deeply interested in nullifying their testimony; and of such respectability and probity as will bid defiance to all attempts to tamper with them.

It will sometimes become your duty to watch with lynx-eyed jealousy selfish persons who may be endeavoring unduly to *influence* testators; in order that you may defeat cunning and nefarious machinations, or at all events be no assisting party to them. What execrable manœuvres in the dying person's chamber, may be frustrated by an acute, a vigilant, and honorable attorney!

Take your instructions for a will, from the testa-

tor himself, personally, and never, when you can avoid doing so, from third persons—particularly from any one interested, in any degree, in the disposition of the testator's property. The validity of a will formed the subject of an action tried on the Northern Circuit, a few months ago,—and the judge took occasion to declare, at the end of the case, that all the difficulty and doubt had arisen from non-observance of the rule which I have just laid down—and which may be presented to you in a much better, and an authoritative form, in an extract from a judgment of the late Sir John Nichol. In the case of *Rogers* v. *Pittis*, (1 Addams, 46) he "admonished professional gentlemen, generally, that where instructions for a will are given by a party not being the proposed testator—*à fortiori*, where by an interested party—it is their bounden duty to satisfy themselves thoroughly either in person, or by the instrumentality of some confidential agent, as to the proposed testator's volition and capacity; or, in other words, that the instrument expresses the real testamentary intentions of a capable testator, prior to its being executed, *de facto*, as a will, at all." Attention to these suggestions may save you from many unpleasant and injurious insinuations and reflections, tending, at all events, to impugn your professional tact and vigilance.

You are bound, morally, as well as legally, to possess a familiar and accurate practical knowledge of the leading rules of law applicable to wills and testaments; seeing you are often called upon *suddenly* to frame these important instruments. A large portion of your time ought to be devoted to

the acquisition of this knowledge. It will always repay your exertions—of that you may rest assured. By way of a beginning, I would advise younger practitioners to study carefully the brief but valuable "*Suggestions to persons taking Instructions for Wills*," which may be found in the Appendix to the second volume of Mr. Jarman's excellent "Treatise on Wills." The following observations, with which it opens, are well worthy of your attention:

"Few of the duties which devolve on attorneys or solicitors, more imperatively call for the exercise of a sound, discriminating, and well-informed judgment, than that of *taking instructions for wills*. It frequently happens, that from a want of familiar acquaintance with the subject, or from the physical weakness induced by disease—where the testamentary act has been, as it too often is, unwisely deferred until the event which is to call it into operation, seems to be impending—testators are incapable of giving more than a general or imperfect outline of their intention, leaving the particular provisions to the discretion of the professional adviser. Some testators, indeed, sit down to this task with so few ideas on the subject, that they *require to be informed* of the ordinary modes of disposition, under similar circumstances of family, and property, with the advantages and disadvantages of each; and their judgment, in the selection of one of these modes, is necessarily influenced by, if not, indeed, wholly dependent upon, professional recommendation. To a want of *complete and accurate information*, as to the consequences of their proposed schemes, must be

ascribed many of the absurd and inconvenient provisions introduced into testamentary gifts: to say nothing of the obscurities and inconsistencies which frequently throw an impenetrable cloud over the testator's intentions. It may be useful," proceeds the very able and learned author, "to mention some particulars, on which information should be obtained, in taking instructions for a will; most of the inquiries here proposed, having been suggested by the various classes of cases discussed at large in this work, and being framed with a view to prevent such questions as those cases present." Then follow the truly valuable suggestions in question, occupying three pages, only, of the work.

So strongly do I feel the necessity of young attorneys and solicitors early acquiring accurate information on this critical subject, that I should, if I had any share in directing the examinations in this Hall, always require the candidates to carry into effect, in proper form, certain proposed cases of testamentary disposition, both of realty and personalty, with a view of ascertaining how far they were already capable, or entertained just ideas, of accomplishing the objects—of effectuating the intentions, of testators suddenly placed *in extremis*. I should also always propose questions adapted to test their knowledge of the practical working of the *Statutes of Distribution*.* Gentlemen, I can not quit this most interesting and important subject, without reminding you of the scope for noble and virtuous action, which is often afforded you, in resisting temptations to take advantage of the favorable ca-

* *Vide Ante*, p. 116.

prices and partialities of testators, toward yourselves —their confidential advisers—on whom a long series of valuable services may have conferred an ascendency over your clients, very dangerous to persons not of inflexible, unwavering honor and integrity. The influence thus acquired, must be used firmly and virtuously, when no human eye, perhaps, can see you, but one already heavy and drooping beneath the shadows of death! There will be fixed upon you, however, the eye of Him who *seeth in secret*, and *shall reward you openly*. May you ever secure that sole guarantee for peace of mind, the testimony of a good conscience!

I know several instances of attorneys acting magnanimously and nobly on such occasions as I am speaking of. One I became acquainted with very recently. Some little time ago, a gentleman in Yorkshire was so displeased by the marriage of his daughter, an only child, that he totally disinherited her! leaving the whole of his fortune to his attorney, and two other gentlemen, none of whom was related to, or connected with him. What did this attorney? As soon as he was aware of what the testator had done, which was not till after his death, the attorney called together his two co-legatees, and succeeded in prevailing upon them to give up their respective shares of the property; the whole of which he forthwith settled securely on the testator's cruelly injured daughter, and her children. Now, was not this a noble and virtuous action? Go *you*, my friends, and should the occasion ever arise, do likewise; shedding luster on the great profession to which you belong, and calling down upon you *the*

blessing of the Lord, which maketh rich, and he addeth no sorrow with it. And as for your fellow-men, "when the ear hears you, then it will bless you; and when the eye sees you, it will give witness to you, because you delivered the poor that cried, and the fatherless, and him that had none to help him. The blessing of him that was ready to perish will come upon you, and you will cause the widow's heart to sing for joy."*

Such, gentlemen, is the best account I am able to present, of the profession which you have entered —of the nature of the duties—moral, social, and professional—which you have undertaken; such are the suggestions which I offer, with a view to facilitating your discharge of those duties. It is honor-

* In a notice of this concluding lecture, in the *Sun* newspaper, this interesting incident was mentioned in terms of just eulogy, in a paragraph which soon afterward made its appearance in most of the newspapers, both in town and country. This occasioned many applications to the author of this work, by persons desirous of learning the name of the gentleman referred to in the text. In consequence of one more urgent than the rest, the author wrote to the gentleman concerned (who lives not very far from Barnsley, in Yorkshire), but in reply, he declined to allow his name to be publicly mentioned; modestly adding, "I do not wish my conduct, on the occasion in question, to be considered so much to my credit, as it appears you have kindly held out; for I assure you I know many men of our profession, who would have acted as I did, under like circumstances." He then gave a very interesting account of the transaction in question. The husband of the disinherited lady was a military officer, and an amiable and honorable person. The property was, however, "not *quite* so large" as had been reported to the author. In all other respects, the account given in the text strictly accords with the facts.

able to undertake them in a proper temper and spirit; but equally unprincipled, disgraceful, and dangerous, to do so indolently, or recklessly. If you steadily contemplate the profession and its requirements, the view must needs make you grave and earnest; and if so, it will engender a humor which will greatly contribute to your success. Frivolity and self-sufficiency will disappear. They must, really, be rooted out of your composition, and supplanted by sobriety and modesty. Your responsibilities will be found too great to be compatible with your peace of mind, unless you resolve early and firmly to act upon the principles which I have endeavored faithfully, however feebly, to inculcate.

You seek to occupy, or already occupy, a post which is very honorable, and confers considerable *influence* on him who occupies it worthily, even though he should obtain only a moderate share of success. While, on the one hand, you must avoid forming inflated notions of the importance and dignity of your position, take care on the other, not to under-estimate them—especially with reference to that other walk of the profession, which we at the bar occupy. You, or your friends, have chosen one branch; we, or our friends, another: both are equally honorable; each has its peculiar responsibilities; in many cases yours are far more arduous and trying than ours, though less conspicuously so. We are brother practitioners of the law, and both concerned in the administration of justice. And let me entreat you, gentlemen, never to suffer yourselves to be betrayed into the use of such idle expressions, emanating from a poor and vulgar spirit,

as, for instance, that you have entered the "*humbler* walk," the "*inferior* ranks" of the profession. Believe me, such language is unworthy of the spirit of gentlemen—highly derogatory to the dignity of your branch of the profession. It is such as never falls, except jocularly, from persons who think aright of themselves, and their profession. Which of the two branches is "superior," and which "inferior"—which is the "higher," and which the "lower" walk, are questions which may safely be left to those, in either department of the law, who are weak enough to occupy themselves with such childish disputes. Be it *our* ambition, gentlemen, to *magnify our office*—by our CONDUCT—by our EXAMPLE.

Gentlemen, I congratulate you on the establishment of that important institution, in the Hall of which, surrounded by its leading members, I have had the honor of addressing you: for an honor I shall ever esteem it. I can testify, from long personal observation, to the discretion with which the gentlemen, placed from time to time in authority here, discharge their responsible duties. It is a great thing for you to have a central rallying point like this; and I rejoice to see the energetic efforts which are now being made to effect that systematic organization and union of town and country attorneys and solicitors, which will be attended with the best results in advancing the true interests of the profession. Those efforts have been much too long delayed. Elements of great social and professional power have hitherto lain scattered abroad over the kingdom, incapable of satisfactory action, because

isolated. What results may they not achieve, when in complete combination? One will be, a cordial, energetic unanimity: and what may not *that* effect?

But my task is over. Never again shall I address you in this Hall; and I shall always reflect on my exertions here with satisfaction, if I may cherish the hope that any one suggestion of mine had dropped into the fertile soil of an upright heart, a promising intellect—that any such hint, whether of warning or encouragement, had been received in as kindly a spirit as it had been offered.

Let me leave you, gentlemen, under a firm persuasion of the vital stake which society at large has, in securing your efficient discharge of your duties. See what pains it has taken to do so! What privileges and immunities has it given you, to enable you to devote yourselves entirely to its interests! The Legislature has recently, at the instance of a firm friend of yours, Lord Langdale, anxiously revised all its enactments concerning you, repealing those which were injurious, and adding new ones for your protection and guidance; but, at the same time. arming the judicial authorities, and also those of this institution, with fresh powers of supervision and control over your professional movements and conduct. You are subjected to a searching examination into your fitness; you are most solemnly SWORN, as I have so often reminded you, to the true and honest performance of your duties, to the best of your knowledge and ability. And that, moreover, in the exercise of a profession which, as our great commentator justly tells us, "employs in its theory

the noblest faculties of the soul, and exerts, in its practice, the cardinal virtues of the heart." What can society do beyond this? Nothing, but punish severely any detected delinquency. For the rest, it depends upon yourselves—upon your own sense of duty toward God and man. It is in your power, alas! after all, cruelly to deceive, and betray, and ruin those who have trusted you with implicit, unbounded confidence. Ay, and you may even do this with impunity, but not with final, nor always even with prolonged impunity. The day of reckoning often comes *here*, and much sooner than was expected. A fair outside may deceive the unsuspecting, till the fiat goes forth—*God shall smite thee, thou whited wall:* then it falls, blackened and blasted, disclosing the hideous corruption that lay behind!

Gentlemen, it were unpardonable to deny that such instances now and then occur; and when they do, they shock and outrage public feeling into a momentary forgetfulness of the comparative rarity of such occurrences. Oh, that they might never be seen at all! And why should they?

I repeat an observation which I made at the close of my first Lecture, that the attorneys and solicitors of the United Kingdom are a great and powerful body of men, whose conduct, as a body, is regulated by high honor, by incorruptible integrity—and that, too, while surrounded by temptations, of the number and magnitude of which the world at large knows nothing. And let me, in taking leave of you, venture to express a hope that you, in your turn, have no reason to be ashamed of another great and powerful body—my brethren—YOUR BAR—the Bar of

England, of Great Britain—that Bar of which I am proud to be a member! And with these expressions of cordial, but thoroughly independent respect—of mutual regard and good understanding—of TRUE BROTHERHOOD, I now bid you all, gentlemen, farewell!

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